MONTANA ADMINISTRATIVE REGISTER

2022 ISSUE NO. 15
AUGUST 5, 2022
PAGES 1344-1685

ISSUE NO. 15

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.5.202, 2.5.301, 2.5.603 through 2.5.605 pertaining to department responsibilities, delegation of purchasing authority, small purchases or limited solicitations of supplies and services, sole source procurement, and exigency procurements and the repeal of ARM 2.4.201 and 2.4.202 pertaining to minimum refund and exceptions to minimum refund rule	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2022, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 17, 2022, to advise us of the nature of the accommodation that you need. Please contact Julie James, Department of Administration, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2460; Montana Relay Service 711; facsimile (406) 444-6194; or e-mail to Julie.James2@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) through (5) remain the same.

(6) The division delegates its procurement authority as follows:

(a) except for controlled items, or as specified in (5), authority is delegated to all agencies for the procurement of supplies and services ~~of $5,000 or~~ with a total value of less than $10,000;

(b) authority to purchase supplies and services when the total contract value is expected to be ~~greater than $5,000~~ $10,000 or more may be granted or revoked after consideration of the following factors:

(i) through (iv) remain the same.

(c) delegation ~~greater than $5,000~~ of $10,000 or more will be given through a written delegation agreement with the State Procurement Bureau. The written delegation shall specify:

(i) through (9) remain the same.

AUTH: 18-4-221, MCA
IMP: 2-17-301, 2-17-512, 18-4-221, 18-4-222, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The proposed rule amendments are part of the department's procurement reform project. The department recently contracted with a third-party consultant and met with internal and external stakeholders to assess state procurement practices. The consultant compared the department's procurement practices to states identified as direct peers and recommended changes to procurement thresholds to align with peer states and industry best practices. The proposed amendments will:

- raise the small purchase procurement threshold for supplies and services from $5,000 or less to less than $10,000. The $5,000 small purchase threshold has been in place since 1994. $5,000 in today's dollar, with an average inflation rate of 2.21% between 1994 and 2022, would be $9,010.
- raise the procurement thresholds for supplies and services for formal solicitations from $25,000 for services and $50,000 for supplies to $100,000. This will provide one consistent threshold. Purchases greater than or equal to $10,000 and less than $100,000 will still require an informal limited solicitation process.
- better align our thresholds with peers and be more in line with other current statutory thresholds. In comparison, the current formal solicitation threshold for Montana counties is $80,000. The current state threshold for formal bidding for building construction projects is $150,000.
- provide operational efficiencies and reduce red tape for low-dollar purchases.

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) Agencies may exercise authority to purchase noncontrolled items with a total contract value of ~~$5,000 or~~ less than $10,000. Agencies may exercise delegated purchasing authority ~~greater than $5,000~~ of $10,000 or more and for exigency purchases in accordance with written delegation agreements described in ARM 2.5.202, with the Montana Procurement Act, and with these rules.

(2) remains the same.

AUTH: 18-4-221, MCA
IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) The division or state agency may procure supplies or services when the total contract value will be ~~$5,000 or~~ less than $10,000 using a purchase technique that best meets the agency's needs, including the use of electronic online auctions.

(2) remains the same.

(3) The division or state agency, if authorized in a written delegation agreement, may procure supplies or services with a total contract value ~~between $5,001 and $25,000, or supplies with a total contract value between $5,001 and $50,000~~ of $10,000 or more and less than $100,000, using a limited solicitation

procedure. This procedure requires a minimum of three viable written or oral quotations, if available. The limited solicitation procedure must be documented and, wherever practical, use the department's vendor list.

(4) through (6) remain the same.

AUTH: 18-4-221, MCA
IMP: 18-4-305, MCA

2.5.604 SOLE SOURCE PROCUREMENT (1) This rule applies to all sole source procurements of ~~$5,000~~ $10,000 or ~~greater~~ more unless exigency procurements described in ARM 2.5.605 are necessary.

(2) remains the same.

(3) For purchases with a total contract value ~~greater than $5,000~~ of $10,000 or more, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification using the "Sole Source Procurement Justification" form referenced in (5).

(4) remains the same.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements ~~greater than $5,000~~ of $10,000 or more shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the division.

(6) and (7) remain the same.

AUTH: 18-4-221, MCA
IMP: 18-4-306, MCA

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of ~~$5,000~~ $10,000 or ~~greater~~ more shall be limited to those supplies or services necessary to meet the exigency, as defined in ARM 2.5.201.

(2) through (4) remain the same.

AUTH: 18-4-221, MCA
IMP: 18-4-133, MCA;

4. The department proposes to repeal the following rules:

2.4.201 MINIMUM REFUND

AUTH: 17-8-201, 17-8-203, MCA
IMP: 17-8-203, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to repeal ARM 2.4.201 and 2.4.202 in an effort to streamline regulation and cut red tape as part of Governor Gianforte's Red Tape Relief Initiative. The

substance of the rules will be incorporated in MOM Policy 330 – Payments, Suppliers, and Related IRS Reporting. By moving the language from rule to policy, it will allow for a more regular structured review and facilitate input from agencies which are directly affected by refund policies.

2.4.202 EXCEPTIONS TO MINIMUM REFUND RULE

AUTH: 17-8-201, 17-8-203, MCA
IMP: 17-8-203, MCA

5. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph 2 above. Comments must be received no later than 5:00 p.m., September 2, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph 2 above no later than 5:00 p.m., August 17, 2022.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Because the proposed amendments and repeal affect only government agencies and do not directly affect the public, the department did not calculate the number of persons necessary to require a hearing. A hearing will be held if requested by the appropriate administrative rule review committee of the Legislature, one governmental subdivision or agency, or an association having not less than 25 members who will be directly affected these rules

8. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrative rules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking

actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed amendment and repeal of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 26, 2022.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.1306 pertaining to actuarial rates and assumptions	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2022, the Public Employees' Retirement Board (board) proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration (MPERA) no later than 5:00 p.m. on August 26, 2022, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, MPERA, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.1306 ACTUARIAL RATES AND ASSUMPTIONS (1) The actuary will present the actuarial data and recommend the board adopt specific rates and assumptions. The board in its discretion will adopt rates and assumptions and publish them in a board policy. The board adopts and incorporates by reference BOARD Admin 09 Actuarial Valuation Assumptions and Methods (approved June ~~8~~ 9, ~~2017~~ 2022), providing actuarial rates, assumptions, methods, and factors used for valuation and actuarial equivalence purposes. BOARD Admin 09 also contains the early retirement factor tables applicable to PERS, HPORS, and SRS.

(2) and (3) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-405, 19-17-107, MCA

STATEMENT OF REASONABLE NECESSITY: The Internal Revenue Service requires public pension systems to adopt actuarial assumptions, rates, methods, and factors in a manner that gives them the force and effect of law. The IRS requirement is an issue that may affect the qualified status of public pension retirement systems. Adopting the applicable actuarial assumptions, rates, methods, and factors into rule by reference gives them the force and effect of law.

The board's actuary performs an experience study every five to seven years. Information obtained through the experience study is used by the actuary to update demographic and economic assumptions relied on when conducting annual valuations of the defined benefit retirement systems administered by the board and to determine actuarial equivalent option factors as well as actuarial cost factors for all defined benefit retirement systems (BOARD Admin 09).

The recommended assumptions resulting from an experience study for the 5-year period from July 1, 2016 to June 30, 2021, were presented to the board on May 12 of this year and adopted in the same meeting. BOARD Admin 09 was updated with those recommended assumptions accordingly and approved by the board on June 9, 2022. This administrative rule update is necessary to give the applicable actuarial assumptions, rates, methods, and factors from that board policy the force and effect of law.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: MPERA, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., September 2, 2022.

6. If the board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 9,380 persons based on the following combined total of members, retirees, and beneficiaries in each defined benefit system administered by MPERA as of June 30, 2021: Public Employees' Retirement System – 79,581, Judges' Retirement System – 134, Highway Patrol Officers' Retirement System – 648, Sheriffs' Retirement System – 3,283, Game Wardens' and Peace Officers' Retirement System – 2,115, Municipal Police Officers' Retirement System – 2,039, Firefighters' Unified Retirement System – 1,550, Volunteer Firefighters' Compensation Act – 4,453, for a total of 93,803 persons.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to activities requiring a license	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2022, the Department of Administration proposes to adopt the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 17, 2022, to advise us of the nature of the accommodation that you need. Please contact Julie James, Department of Administration, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2460; Montana Relay Service 711; facsimile (406) 444-6194; or e-mail to Julie.James2@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I ACTIVITIES REQUIRING A LICENSE (1) For purposes of 32-9-124(1)(h), MCA, the department adopts by reference Appendices A through D of 12 CFR 1008 (Regulation H) (July 1, 2022). The appendices may be found on the department's website at banking.mt.gov.

AUTH: 32-9-130 MCA
IMP: 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-124(1)(h), MCA provides that the conduct of any business covered by the provisions of the Secure and Fair Enforcement of Mortgage Licensing Act without holding a valid license as required by the Montana Mortgage Act is prohibited.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was enacted on July 30, 2008. 12 USC 5101-16, Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, 12 USC 5101, et seq.) The SAFE Act required all states to enact state laws that complied with the SAFE Act within two years. Montana enacted the Montana Mortgage Act in 2009 which is modeled on and compliant with the SAFE Act. Mont. Code Ann. 32-9-101, et seq. The Department of Housing and Urban Development (HUD) initially adopted rules interpreting the SAFE Act on June 30, 2011. 24 CFR 3400.

On July 21, 2010, the Dodd-Frank Act transferred rulemaking authority for the SAFE Act from HUD to the Consumer Financial Protection Bureau (CFPB). Title X

of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Consumer Financial Protection Act of 2010) (Pub. L. No. 111–203, 124 Stat. 1376). On December 19, 2011, the CFPB adopted 12 CFR 1008 (Regulation H). The rules adopted by the CFPB substantially duplicated the HUD rules. 76 Fed. Reg. 78487.

The department has referenced and utilized the federal rules to interpret and implement the Montana Mortgage Act since HUD initially adopted the rules. Specifically, the department has referenced Appendices A through D of Regulation H in interpreting what actions do or do not constitute acting as a mortgage loan originator and acting as a loan processor or underwriter since HUD initially adopted the rules. The department is formalizing longstanding practice by adopting by reference Appendices A through D of Regulation H.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph 2 above. Comments must be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph 2 above no later than 5:00 p.m., August 17, 2022.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be greater than 25 persons based on the combined total of 297 mortgage brokers, 289 mortgage lenders, 210 mortgage servicers, and 7,038 mortgage loan originators licensed in this state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the department's website at http://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the

official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed adoption of the above-stated rule will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.138 pertaining to banking definitions	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2022**,** the Department of Administration proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 17, 2022, to advise us of the nature of the accommodation that you need. Please contact Julie James, Department of Administration, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2460; Montana Relay Service 711, facsimile (406) 444-6194; or e-mail to Julie.James2@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.138 DEFINITIONS For purposes of ~~ARM 2.59.139 through 2.59.143~~ 32-1-432, MCA, the following definitions apply:

(1) through (3) remain the same.

AUTH: 32-1-211, 32-1-432, MCA
IMP: 32-1-211, 32-1-432, MCA

STATEMENT OF REASONABLE NECESSITY: The definitions in ARM 2.59.138 are used in and should apply to the statute, 32-1-432, MCA, not just to the rules which interpret the statute located in ARM 2.59.139 through 2.59.143.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph 2 above. Comments must be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph 2 above no later than 5:00 p.m., August 17, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be greater than 3 persons based on the 36 state-chartered banks.

7. An electronic copy of this proposal notice is available through the department's website at http://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 26, 2022.

BEFORE THE STATE LOTTERY AND SPORTS WAGERING COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.63.201 pertaining to procedural rules	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2022, the commission proposes to amend the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on August 17, 2022, to advise us of the nature of the accommodation that you need. Please contact Julie James, Department of Administration, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2460; Montana Relay Service 711, facsimile (406) 444-6194; or e-mail to Julie.James2@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.63.201 PROCEDURAL RULES (1) remains the same.
(2) The commission adopts and incorporates the public meeting rule of the Department of Administration found in ARM 2.2.102.

AUTH: 2-3-103, 2-4-201, MCA
IMP: 2-3-103, 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is proposing to amend this rule to adopt and incorporate the department's recently adopted new rule regarding public meetings. This will ensure that the public has a reasonable opportunity to participate in the commission's deliberations and decisions that are of significant public interest.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph 2 above. Comments must be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any

written comments to the person listed in paragraph 2 above no later than 5:00 p.m., August 17, 2022.

6. If the commission receives requests for a public hearing on the proposed action from 25 persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be greater than 25 based on the number of citizens in Montana.

7. An electronic copy of this proposal notice is available through the Department of Administration's website at http://doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the commission.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The commission has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly impact small businesses.

By: /s/ Leo Prigge
Leo Prigge
Chair
State Lottery and Sports
Wagering Commission

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 26, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.803, 6.6.2707, 6.6.2809, and 6.6.5701 pertaining to Annuities, Periodic Payment of Premium Taxes, and Surplus Lines Insurance Transactions, and Supervision, Rehabilitation, and Liquidation of Self-Funded Multiple Employer Welfare Arrangements	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rules.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.803 APPLICABILITY AND SCOPE (1) through (1)(d) remain the same.
(e) structured settlement annuities; ~~and~~
(f) charitable gift annuities; and~~.~~
(g) remains the same.

AUTH: 33-1-313, 33-20-308, MCA
IMP: 33-20-308, MCA

6.6.2707 CESSATION OF BUSINESS (1) If an insurer~~, on a form approved by the commissioner and under oath,~~ notifies the commissioner in writing that it is no longer writing new or renewing existing insurance policies of any type in the state, the commissioner may waive the periodic payment requirements established in these rules.

AUTH: 33-2-705~~(7)~~, MCA
IMP: 33-2-705~~(7)~~, MCA

6.6.2809 APPROVED RISK LIST -- INSURANCE PRESUMED UNOBTAINABLE FROM AUTHORIZED INSURERS (1) remains the same.

(2) The commissioner~~, in consultation with the surplus lines insurance producer association domiciled in Montana,~~ shall appoint a five-member committee to compile a proposed approved risk list for consideration by the commissioner. The committee shall consist of four Montana-licensed surplus lines insurance producers and one staff member of the department, each serving until replaced by the commissioner.

(3) through (5) remain the same.

AUTH: 33-1-313, 33-2-316, MCA
IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, MCA

6.6.5701 SUPERVISION, REHABILITATION, AND LIQUIDATION (1) The commissioner has the authority to impose sanctions on any self-funded multiple employer welfare arrangement (MEWA) for failure to maintain sufficient reserves as required by 33-35-209 , MCA. The commissioner may impose and take any action or sanction as is authorized pursuant to the provisions of Title 33, chapter 2, part 13, MCA, which are adopted ~~herein~~ by reference and excepting therefrom 33-2-1303(1) and (10), MCA; 33-2-1335, MCA; 33-2-1342(6)(b) and (6)(c), MCA; 33-2-1344, MCA; 33-2-1349, MCA; and 33-2-1379 through 33-2-1390, MCA. ~~A copy of the statutes is available for public inspection at and a copy may be obtained from the office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, MT 59620-4009.~~

AUTH: 33-35-209, MCA
IMP: 33-35-209, MCA

4. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) has completed a biannual review of CSI's rules as required by 2-4-314, MCA, and identified each of the above rules of the Insurance Department as needing a housekeeping type amendment. The reason for each of above-proposed amendments is set forth below.

ARM 6.6.803(1)(e) through (g) are proposed to be amended to correct an error in the punctuation of the list and make the rule more easily understood.

ARM 6.6.2707(1) is proposed to be amended to eliminate the reference to and requirement to use a form that is no longer used or provided by the office and instead to allow an insurer to simply provide written notice to the commissioner that it has ceased writing new or renewing business.

ARM 6.6.2809(2) is proposed to be amended to eliminate reference to "the surplus lines insurance producer association domiciled in Montana," as that association has ceased to exist; further, the statute regarding the formation of this association is permissive, and the commissioner's consultation with the association is allowed, but not required, by 33-2-322, MCA.

ARM 6.6.5707(1) is proposed to be amended to eliminate an unnecessary and confusing adoption-by-reference of the Montana Code Annotated, which is not required by 2-4-307(1), MCA.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., September 2, 2022.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 10 persons based on a conservative estimate of how frequently CSI receives questions about the above-stated rules per year.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State July 26, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.706 and 6.6.707 pertaining to Life Insurance Illustrations	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rules.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.706 GENERAL RULES AND PROHIBITIONS (1) through (1)(b) remain the same.

(c) name, ~~and~~ age, and sex (if sex is used in underwriting) of proposed insured, except where a composite illustration is permitted under this subchapter;

(d) through (3) remain the same.

AUTH: 33-20-150, MCA
IMP: 33-18-202, 33-20-150, 49-2-309, MCA

6.6.707 STANDARDS FOR BASIC ILLUSTRATIONS – FORMAT (1) and (1)(a) remain the same.

(b) each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages");

(c) through (g) remain the same.

(h) the guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements~~;~~");

(i) through (n) remain the same.

AUTH: 33-20-150, MCA

IMP: 33-18-202, 33-20-150, MCA

4. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. House Bill 379 (Ch. 250, L. 2021) passed by the 67th Montana Legislature, amended 49-2-309(4), MCA, to allow for consideration of sex and marital status in accepted ratemaking methodologies when establishing insurance premium rates. This change was made applicable to insurance contracts renewed on or after January 1, 2022. The commissioner proposes to amend ARM 6.6.706(1)(c)—which sets forth general rules and prohibitions regarding life insurance illustrations provided to Montana residents pursuant to 33-20-150, MCA—to add reference to "sex" in light of the statutory change to 49-2-309, MCA.

The commissioner also reviewed the remaining rules in subchapter 7 as part of the biannual review of CSI's rules pursuant to 2-4-314, MCA. That review identified two housekeeping type corrections that were needed to ARM 6.6.707: first, (1)(b) is proposed to be amended to add a missing word ("the") so that the sentence is more easily understood; and second, (1)(h) is proposed to be amended to correct the confusing and incorrect placement of the semicolon.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., September 2, 2022.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far excess of 25 persons based on an estimate of the number of life insurance policies that are marketed, issued, or issued for delivery to Montana residents per year.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the

person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State July 26, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.10.303 pertaining to Exemptions	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rule.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

<u>6.10.303 SECOND TIER LIMITED OFFERING EXEMPTION</u> (1) through (2)(a) remain the same.

~~(b) a filing fee of $50;~~

(c) and (d) remain the same but are renumbered (b) and (c).

(3) remains the same.

AUTH: 30-10-107, MCA
IMP: 30-10-105, MCA

4. REASON: As part of the biannual review of CSI's rules as required by 2-4-314, MCA, Montana State Auditor Troy Downing (commissioner) identified ARM 6.10.303 for revision to eliminate reference to a reduced filing fee ($50) that conflicts with the applicable statutory requirements of 30-10-209(4), MCA, specifying a $100 fee for exempt transaction requests at issue in the above rule. The fee for exempt transaction requests was increased from $50 to $100 in 30-10-209(4), MCA, by the Montana Legislature in 2019 (Sec. 1, Ch. 396, L. 2019), which change was effective on passage and approval (May 9, 2019). This rule, however, had not been updated accordingly by the prior commissioner.

5. The financial impact of this proposed correction going forward should be $0.00 as the fee required by statute has been $100 since at least May 2019. However, the proposed correction to remove the conflicting rule provision will

technically "increase" the (incorrect) filing fee by $50 per filing. Thus, in keeping with the requirements of 2-4-302(1)(c), MCA, the estimated number of persons affected by this change is 10 per year, making the estimated cumulative amount of this "increase" for all persons in one year, $500.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., September 2, 2022.

8. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the number of second tier limited offering exemptions filed with the commissioner per year.

9. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 or may be made by completing a request form at any rules hearing held by CSI.

10. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State July 26, 2022.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.2804 pertaining to the Collection of Stamping Fee	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rule.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail csi@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

6.6.2804 COLLECTION OF STAMPING FEE (1) Pursuant to 33-2-321, MCA, the ~~department shall~~ commissioner has determined that CSI will not collect a stamping fee on the base premium, including any monied endorsement, payable for each surplus lines insurance policy transacted in the state.

~~(2) The stamping fee is equal to:~~

~~(a) one percent of the base premium for paper (hard copy) submissions; and~~

~~(b) one-half percent of the base premium for electronically filed submissions via the surplus lines business portal via the department's web site.~~

~~(3) Effective January 1, 2012, the stamping fee is equal to:~~

~~(a) one-quarter percent of the base premium for paper (hard copy) submissions; and~~

~~(b) no charge for electronically filed submissions via the surplus lines business portal via the department's web site.~~

~~(4) The stamping fee on the underlying surplus lines insurance policy shall be earned in full as soon as any portion of the premium payable for the underlying policy is earned. For any monied endorsement, the stamping fee shall be earned in full as soon as any portion of the premium payable for the endorsement is earned.~~

~~(5) Because such stamping fee does not constitute "consideration for insurance" within the meaning of 33-15-102, MCA, and thus does not constitute part of the premium for surplus lines insurance, a surplus lines insurance producer may collect such stamping fee from the insured in addition to the premium payable in consideration for the insurance contract. Nothing in this rule shall operate to exclude~~

~~any other assessment, membership, inspection, or similar fee or charge from the definition of "premium" contained in 33-15-102, MCA.~~

~~(6) Both the base premium and the stamping fee of every policy of surplus lines insurance transacted in this state shall appear on the policy's declarations page and be clearly disclosed as such.~~

~~(7) For paper (hard copy) submissions, the stamping fee information on the declarations page of the surplus lines insurance policy will disclose that the stamping fee would be less, and the percentage of the base premium to calculate the stamping fee, if the submission were filed electronically:~~

~~(i) section (6) will be effective January 1, 2010.~~

~~(8) For the purposes of collecting this stamping fee only, any assessment, membership, inspection, or similar fee or charge payable separately by the insured in consideration of the policy shall be excluded from calculations of the base premium. Designation of a base premium for purposes of calculating the stamping fee shall not operate to exclude from the definition of "premium" contained in 33-15-102, MCA, any assessment, membership, inspection, or similar fee or charge in consideration of that surplus lines insurance policy.~~

~~(9) The department may collect a penalty from any surplus lines insurance producer, or any insured who independently procured insurance, and who does not pay the stamping fees by April 1 for all transactions during the preceding year. Such penalty shall equal 25 percent of the amount overdue plus 1.5 percent per month from the time of delinquency until the stamping fees are paid in full.~~

AUTH: 33-1-313, 33-2-216, MCA
IMP: ~~33-2-301, 33-2-302, 33-2-303,~~ ~~33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316,~~ 33-2-321, MCA

4. REASON: As part of the biannual review of CSI's rules as required by 2-4-314, MCA, Montana State Auditor Troy Downing (commissioner) identified ARM 6.6.2804 for revision. The so-called stamping fee was previously collected to assist with the costs of processing certain forms as part of the regulation of surplus lines; the fee is permitted, in the commissioner's discretion, by 33-2-321, MCA. However, the forms at issue are now filed almost exclusively electronically (for which there currently is no fee) and the expenses associated with processing paper forms, as well as the amount of fees collected, are negligible. Thus, the commissioner has determined that it is no longer in the public interest to require collection of this small fee and proposes to eliminate the rule.

5. The proposed change to no longer collect the stamping fee will result in the decrease of the fee for persons making hard copy (paper) submissions. Because no submissions were made in hard copy in the last year, the estimated number of persons affected by this change is zero, and the estimated cumulative amount of this decrease for all persons in one year is $0.00.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040

or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., September 2, 2022.

8. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the fact that the number of surplus lines transactions in Montana in Tax Year 2021 was estimated to be in excess of 20,000.

9. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 or may be made by completing a request form at any rules hearing held by CSI.

10. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, CSI has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ *Kirsten Madsen*
Kirsten Madsen
Rule Reviewer

/s/ *Ole Olson*
Ole Olson
Chief Legal Counsel
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3727, 8.94.3729, 8.94.3730, and 8.94.3731 pertaining to the administration of the CDBG program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2022, at 10:00 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Video:

https://mt-gov.zoom.us/s/87838354534?pwd=c3ZFaHBmc0NJRnhTV2ZDNitRcCtVUT09

Webinar ID: 878 3835 4534 Password: 444984

b. Phone: Dial in by Telephone: 406-444-9999

Meeting ID: 878 3835 4534 Password: 444984

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., August 23, 2022, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE CDBG PROGRAM (1) remains the same.

(a) the ~~FFY 2012~~ Application Guidelines for the Community Development Block Grant Economic Development Program (July 2022); and

(b) and (2) remain the same.

(3) ~~Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at http://Comdev.mt.gov/Programs/CDBG, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box~~

~~200523, Helena, Montana 59620-0523.~~ Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Community MT's web site at https://comdev.mt.gov/Programs-and-Boards/Community-Development-Block-Grant-Program/Economic-Development.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the Community Development Block Grant Economic Development Program (CDBG-ED) Application Guidelines to increase the application limit from $25,000 to $35,000 per job, allowing for increased total awards from $400,000 to $560,000; streamline application and guidelines for improved clarity and ease of use by program applicants; improve efficiency in the administration of the application process by posting deadlines, contact information, and submission requirements on the Commerce web site, rather than in the regulations; and allow for digital submission of applications.

8.94.3729 INCORPORATION BY REFERENCE OF RULES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – COMMUNITY AND PUBLIC FACILITIES PROJECTS APPLICATION AND GUIDELINES (1) The Department of Commerce adopts and incorporates by reference the ~~2021~~ Community and Public Facilities Application and Guidelines as rules for the administration of the Community Development Block Grant (CDBG) Program (July 2022).

(2) remains the same

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community ~~Development Division~~ MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on ~~the~~ Community ~~Development Division's~~ MT's web site at ~~https://comdev.mt.gov/Programs/CDBG/Facilities/ApplicationForms~~ https://comdev.mt.gov/Programs-and-Boards/Community-Development-Block-Grant-Program/Public-and-Community-Facilities.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the Community and Public Facilities Application and Guidelines to increase application limit from $600,000 to $750,000 to help address increased material and labor construction costs; in limited circumstances, and with Commerce approval, allow a city or county applicant to have more than one CDBG Public Facility or Community Facility application open; improve efficiency in administration of the application process by posting deadlines, contact information, and submission requirements on the Commerce web site, rather than in the regulations; and allow for digital submission of applications.

8.94.3730 INCORPORATION BY REFERENCE OF RULES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – AFFORDABLE HOUSING DEVELOPMENT AND REHABILITATION PROJECTS APPLICATION AND GUIDELINES (1) The Department of Commerce adopts and incorporates by reference the ~~2020~~ Affordable Housing Development and Rehabilitation Application and Guidelines as rules for the administration of the Community Development Block Grant (CDBG) Program (July 2022).

(2) remains the same.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community ~~Development Division~~ MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Community ~~Development Division's~~ MT's (July 2022) web site at ~~https://comdev.mt.gov/Programs/CDBG/Housing/ApplicationForms~~ https://comdev.mt.gov/Programs-and-Boards/Community-Development-Block-Grant-Program/Housing.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the Affordable Housing Development and Rehabilitation Application and Guidelines to increase application limit from $600,000 to $750,000 to help address increased material and labor construction costs; in limited circumstances, and with Commerce approval, to allow a city or county applicant to have more than one CDBG Public Affordable Housing Development and Rehabilitation application open; to improve efficiency in administration of the application process by posting deadlines, contact information, and submission requirements on the Commerce web site, rather than in the regulations; and to allow for digital submission of applications.

8.94.3731 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – HOUSING STABILIZATION PROGRAM APPLICATION GUIDELINES

(1) The Department of Commerce adopts and incorporates by reference the ~~2020~~ Housing Stabilization Program Application Guidelines as rules for the Community Development Block Grant (CDBG) Program (July 2022).

(2) remains the same.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community ~~Development Division~~ MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Community ~~Development Division~~ MT's web site at ~~https://comdev.mt.gov/Programs/CDBG/Housing/ApplicationForms~~ https://comdev.mt.gov/Programs-and-Boards/Community-Development-Block-Grant-Program/Housing.

REASON: It is reasonably necessary to amend this rule to incorporate updated material for the administration of the Housing Stabilization Program Application Guidelines; to improve efficiency in administration of the application process by posting deadlines, contact information, and submission requirements on the Commerce web site, rather than in the regulations; and to allow for digital submission of applications.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

5. The Office of Legal Affairs, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Adam Schafer
Adam Schafer
Deputy Director
Department of Commerce

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the amendment of ARM 10.58.102, 10.58.103, 10.58.104, 10.58.311, 10.58.312, 10.58.313, 10.58.314, 10.58.315, 10.58.501, 10.58.502, 10.58.503, 10.58.505, 10.58.507, 10.58.509, 10.58.510, 10.58.511, 10.58.513, 10.58.514, 10.58.515, 10.58.516, 10.58.517, 10.58.518, 10.58.521, 10.58.522, 10.58.523, 10.58.524, 10.58.526, 10.58.528, 10.58.531, 10.58.532, 10.58.533, 10.58.604, 10.58.605, 10.58.606, 10.58.607, 10.58.608, 10.58.609, 10.58.610, 10.58.705, 10.58.706, and 10.58.707 pertaining to professional educator preparation program standards	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 30, 2022, at 9:00 a.m., the Board of Public Education will hold a public hearing in Room 152 of the Montana State Capitol in Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Kris Stockton, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, Helena, Montana, 59635; telephone (406) 444-0302; or e-mail bpe@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I ENGLISH AS A SECOND LANGUAGE (ESL) (1) The English as a Second Language (ESL) program requires that successful candidates:

(a) demonstrate understanding of language as a system, including phonology, morphology, syntax, pragmatics, and semantics;

(b) use the major language acquisition theories to develop a standards-based ESL curriculum which teaches language and literacy through academic content areas;

(c) apply knowledge of the functions and registers of language to develop and modify instructional materials, deliver instruction, and promote English learner (EL) students' academic English language proficiency;

(d) facilitate students' use of their first language as a resource to promote academic learning and further development of the second language;

(e) implement a repertoire of research and evidence-based strategies that promote students' critical thinking and problem solving at all stages of language development;

(f) demonstrate understanding of Montana's major language and cultural groups and how cultural histories and identities affect language learning and achievement;

(g) establish goals, design curricula and instruction, and facilitate student learning in a manner that builds on students' linguistic and cultural diversity, promotes respect for linguistic differences, and creates a culturally responsive classroom environment;

(h) demonstrate understanding of language proficiency assessment tools used for identification, placement, and reclassification of ELs;

(i) demonstrate the ability to use a combination of assessments that measure language proficiency and content knowledge respectively to determine how level of language proficiency may affect the demonstration of academic performance;

(j) demonstrate the ability to build partnerships with colleagues and students' families, serve as community resources, and advocate for EL students;

(k) apply knowledge of historical, theoretical, and policy factors in EL education to the planning, implementation, evaluation, and improvement of instructional programs; and

(l) demonstrate successful completion of a two-year program, or the equivalent experience, in learning a second language.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

10.58.102 PROCESS LEADING TO ACCREDITATION OF EDUCATOR PREPARATION PROVIDERS (1) and (2) remain the same.

(a) The Superintendent of Public Instruction shall establish a cadre of qualified educators to serve on review teams. Team members representing accredited ~~K-20~~ P-20 education entities shall:

(i) be nominated by ~~K-20~~ P-20 teachers, administrators, supervisors, and members of professional organizations, educational boards, and agencies; and

(ii) through (3) remain the same.

AUTH: 20-2-114, MCA;
IMP: 20-2-121, MCA

10.58.103 ACCREDITATION SITE REVIEWS (1) remains the same.

(2) Joint accreditation site reviews and cooperation with ~~the Council for the Accreditation of Educator Preparation (CAEP)~~ national accreditation agencies will be encouraged.

(3) remains the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.104 ACCREDITED PROGRAMS (1) through (2)(a) remain the same.

(b) The report shall be accessible to ~~K-20~~ P-20 educators and the general public within the state, and to other state education agencies, and shall be posted to the Office of Public Instruction and Board of Public Education web sites.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.311 INITIAL CONTENT AND PEDAGOGICAL KNOWLEDGE (1) The provider ensures that candidates:

(a) ~~demonstrate a deep~~ develop an understanding of the critical concepts and principles of their discipline and are able to use discipline-specific practices flexibly to advance the learning of all P-12 students toward attainment of college- and career-readiness standards;

(b) demonstrate an understanding of the 11 Montana teaching standards (ARM 10.58.501) ~~within the categories "the learner and learning," "content," "instructional practice," and "professional responsibility;"~~ that apply to critical concepts and principles of learner development and learning differences and that create safe and supportive learning environments in order to work effectively with all P-12 students and their families;

(c) ~~use research and evidence to develop an understanding of the teaching profession and use both to measure their P-12 students' progress and their own professional practice~~ demonstrate knowledge and concepts of their content area and are able to apply the content in developing learning experiences for all P-12 students;

(d) ~~apply content and pedagogical knowledge as reflected in outcome assessments in response to standards of professional associations and national or other accrediting bodies~~ assess, plan for instruction, and utilize a variety of instructional strategies to provide learning experiences for all P-12 students;

(e) demonstrate skills and commitment that afford all P-12 students access to rigorous college- and career-ready standards; ~~and~~

(f) engage in professional learning, take responsibility for student learning, and collaborate with others to work effectively with all P-12 students and their families; and

(g) ~~integrate~~ select and utilize appropriate technology in the design, delivery, ~~implementation,~~ and assessment of learning experiences to engage P-12 students and families, improve learning, and enrich professional practice.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.58.312 INITIAL CLINICAL PARTNERSHIPS AND PRACTICE (1) The provider:

(a) ensures that effective partnerships and high-quality clinical practice in different settings and modalities are central to preparation so that candidates develop the knowledge, skills, and professional dispositions necessary to demonstrate positive impact on all P-12 students' learning and development;

(b) ~~ensures that partners co-construct~~ co-constructs mutually beneficial P-12 school and community arrangements~~, including technology-based collaborations~~ for clinical preparation and share responsibility for continuous improvement of candidate preparation~~.~~ by:

(i) ensuring partnerships ~~Partnerships~~ for clinical preparation ~~can~~ follow a range of forms, participants, and functions~~.~~;

(ii) establishing ~~They establish~~ mutually agreeable expectations for candidate entry, preparation, and exit;

(iii) ensuring ~~ensure~~ that theory and practice are linked~~; maintain~~ by maintaining coherence across clinical and academic components of preparation; ~~and~~

(iv) sharing ~~share~~ accountability for candidate outcomes; and

(v) to the extent possible, providing opportunities for candidates to student teach in the district and school of their choice, including through recruitment and retention programs adopted by school districts, in accordance with statewide agreements among providers;

(c) ensures that partners co-select, prepare, evaluate, and support~~, and retain~~ high-quality clinical educators, both provider- and school-based, who demonstrate a positive impact on candidates' development and P-12 student learning and development~~. In collaboration with their partners, the provider uses multiple indicators and appropriate technology-based applications to establish, maintain, and refine criteria for selection, professional development, performance evaluation, continuous improvement, and retention of clinical educators in all clinical placement settings~~; and

(d) works with partners to design and implement clinical experiences, utilizing various modalities of sufficient depth, breadth, diversity, coherence, and duration to ensure that candidates demonstrate their developing effectiveness and positive impact on all students' learning and development. Clinical experiences~~, including technology-enhanced learning opportunities,~~ are structured to have multiple performance-based assessments at key points within the program to demonstrate candidates' development of the knowledge, skills, and professional dispositions, as delineated in ARM 10.58.311.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.313 INITIAL CANDIDATE QUALITY~~,~~ RECRUITMENT, PROGRESSION, AND ~~SELECTIVITY~~ SUPPORT (1) The provider:

(a) demonstrates that the development of candidate quality ~~of candidates is a continuing and purposeful part of its responsibility from recruitment, at admission,~~

~~through the progression of courses and clinical experiences, and to decisions that completers are prepared to teach effectively and are recommended for licensure~~ is the goal of educator preparation and provides support services in all phases of the program;

(b) develops and implements plans and efforts to know and address local, state, regional, and national needs for hard-to-staff schools and shortage fields. The goals and evidence show progress toward a high-quality candidate pool that reflects the diversity of Montana's P-12 students; ~~presents plans and goals to recruit and support completion of high-quality initial candidates from a broad range of backgrounds and diverse populations to accomplish its mission:~~

~~(i) admitted candidates reflect the diversity of Montana's P-12 students; and~~

~~(ii) the provider demonstrates efforts to know and address local, community, tribal, Montana, national, or regional needs for hard-to-staff schools and current shortage fields;~~

(c) sets admissions requirements, ~~including the CAEP minimum GPA of 3.0 of the average grade point average of its accepted cohort of candidates,~~ gathers data to monitor the applicants and selected pool of candidates and designs the selection to completion policy that includes multiple assessment measures to determine admission, continuation in, and completion of programs, including data points that are valid and reliable predictors of candidate success and demonstrate that the standard for high academic achievement and ability is met through multiple evaluations and sources of evidence~~:~~

~~(i) data points that are reliable and valid predictors of candidate success and demonstrate that the standard for high academic achievement and ability is met through multiple evaluations and sources of evidence; and~~

~~(ii) data that is regularly and systematically compiled, summarized, and analyzed to improve the applicant pool, and candidate performance, program quality, and unit operations~~;

(d) ~~establishes and~~ monitors ~~attributes and~~ dispositions beyond academic ability that candidates must demonstrate at admissions and during the program~~,~~ ~~including selecting criteria, describing the measures used and evidence of the reliability and validity of those measures, and reporting data that show how the academic and nonacademic factors predict candidate performance in the program and effective teaching~~ using valid and reliable measures;

(e) remains the same.

~~(f) prior to recommending any completing candidate for licensure, documents that the candidate has reached a high standard for content knowledge in the fields where licensure is sought and can teach effectively with positive impacts on P-12 student learning and development; and~~

~~(g)~~ (f) prior to recommending any completing candidate for licensure, documents that the candidate understands the expectations of the profession, including ~~codes of ethics~~ ethical conduct, professional standards of practice, and relevant laws and policies~~.~~; and

(g) implements a system for effectively maintaining records of candidate formal complaints and resolution documentation.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.58.314 INITIAL PROGRAM IMPACT (1) The provider:

(a) demonstrates the ~~impact~~ effectiveness of its ~~completers~~ completers' instruction on P-12 student learning and development~~, classroom instruction, and schools,~~ and completer and employer ~~the~~ satisfaction ~~of its completers~~ with the relevance and effectiveness of ~~their~~ preparation;

(b) ~~documents impact on P-12 student learning and development using state-supported P-12 data and other measures employed by the provider, including employer surveys~~ demonstrates that program completers effectively contribute to P-12 student learning using valid and reliable data, including employer and program completer surveys;

(c) demonstrates, through structured and validated ~~observation~~ instruments, including, but not limited to, ~~and~~ surveys, interviews, and observations, that ~~which~~ program completers effectively apply the professional knowledge, skills, and dispositions as ~~delineated~~ described in ARM 10.58.501;

(d) demonstrates, using ~~measures that result in~~ valid and reliable data, that employers are satisfied with the program completers' preparation for their ~~assigned~~ responsibilities ~~in~~ working with P-12 students and their families; and

(e) demonstrates, using ~~measures that result in~~ valid and reliable data, that program completers perceive their preparation as relevant to the responsibilities they ~~confront~~ encounter on the job and that the preparation was effective.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.315 INITIAL PROVIDER QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT (1) The provider:

(a) ~~maintains~~ develops a quality assurance system ~~comprised~~ that consists of valid and reliable data from multiple measures~~, including evidence~~ of candidates' and completers' positive impact on P-12 ~~student learning and development;~~ students and supports continuous improvement that is sustained and evidence-based ~~and that evaluates the effectiveness of its completers; and~~. The provider uses the results of inquiry and data collection to establish priorities, enhance program elements and capacity, and ~~test~~ highlight innovations ~~to improve completers' impact on P-12 student learning and development~~;

(b) ~~develops~~ implements and maintains a quality assurance system comprised of multiple measures that can monitor candidate progress, completer ~~achievements~~ impacts, and provider operational effectiveness. The provider documents the process of data entry and how data are reported and used in decision making to make programmatic improvement;

(c) ensures that ~~its~~ the quality assurance system relies on ~~data that are~~ relevant, verifiable, representative, cumulative~~; provides specific guidance for improvement; and produces empirical evidence that~~, and actionable measures to ensure interpretations of data are valid and consistent;

(d) regularly and systematically assesses program performance against its goals and relevant standards, ~~tracks~~ monitors results over time, tests innovations,

~~and the effects of selection criteria on subsequent progress and completion,~~ and uses results to improve program elements and processes;

(e) ensures that ~~measures of completer impact on P-12 learning and development~~ data from the quality assurance system are based on established best practices~~,~~; summarized, analyzed, shared widely, and acted upon in decision making related to programs, resource allocation, and future direction; and

(f) assures that ~~appropriate~~ internal and external stakeholders, including, but not limited to, faculty staff, candidates, completers, ~~alumni,~~ employers, practitioners, and school and community partners~~, and others defined by the provider,~~ are ~~involved~~ engaged in program design, evaluation, and continuous innovative improvement processes~~, and identification of models of excellence~~.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.501 TEACHING STANDARDS (1) All programs require that successful candidates:

(a) demonstrate understanding of how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, behavioral health continuums ~~continuum~~, and physical areas, and differentiate developmentally appropriate instruction for learners of all abilities based on evidence-based practices ~~and individualize developmentally appropriate and challenging learning experiences for learners of all cognitive abilities~~;

(b) use understanding of individual differences and diverse cultures, languages, and communities, including American Indians and tribes in Montana and English Language Learners (ELL), to ensure inclusive environments that enable each learner to meet high standards;

(c) remains the same.

(d) demonstrate understanding of the central concepts, tools of inquiry, and structures of the discipline(s) the candidate teaches and create ~~individualized~~ personalized learning experiences that make the discipline accessible and meaningful for learners to assure mastery of the content, and include the instruction of reading and writing literacy into all program areas;

(e) and (f) remain the same.

(g) plan and implement ~~individualized instruction that supports students of all cognitive abilities in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context~~ evidence-based practices that support the well-being, behavioral, and academic needs of all students;

(h) remains the same.

(i) engage in ongoing professional learning and use evidence to continually evaluate candidate's practice, particularly the effects of ~~candidate's~~ their choices and actions on others (learners, families, other professionals, and the community), and adapt practice to meet the needs of each learner;

(j) and (k) remain the same.

(l) demonstrate understanding of and ability to integrate history, cultural heritage, language, and contemporary status of American Indians and tribes in Montana.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.502 AGRICULTURAL EDUCATION (1) The program requires that candidates have one year (~~2000~~ minimum 500 hours) of practical farm or agricultural-related experience within five years prior to completion of the program and that successful candidates:

(a) through (c) remain the same.

(d) demonstrate the development of personal and leadership competencies ~~(e.g.~~ including, but not limited to, citizenship, personal development, goal setting, parliamentary procedure, and teamwork~~)~~;

(e) remains the same.

(f) demonstrate~~s~~ the skills and abilities to develop, utilize, and manage dedicated educational facilities with current and emerging equipment, resources, library, media, and electronic technology~~.~~; ~~and~~ maintain a safe environment; and create a culture of safety during classroom, laboratory, leadership, and supervised agricultural experiences ~~(facilities are related to instructional areas mentioned in (1))~~;

(g) and (h) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.503 ART K-12 (1) The program requires that successful candidates:

(a) demonstrate ~~understanding of~~ proficiency in and engage in the processes of art making involving traditional and contemporary studio approaches, concentrating in one or more studio area;

(b) demonstrate understanding and application of global, historical, and contemporary theories of art education curriculum and instruction, visual culture, and cross-curricular and interdisciplinary skills enabling ~~them~~ learners to reflect and refine personal art education practices;

(c) engage in inquiry into the ~~history~~ diverse histories of art, enabling ~~them~~ learners to ~~acquire~~ be exposed to ~~knowledge of~~ the cultural ~~context~~ contexts in which artworks ~~have been~~ are created, including that of American Indians and tribes in Montana, and fostering respect for all forms of art through the study of diverse traditional and contemporary artists;

(d) develop abilities to critically study, see, and respond to the diverse qualities within artworks, ~~both in~~ including the process of creating their own artworks and ~~in observing~~ curating the artworks of others, and teaching candidates to communicate their perceptions about artworks in verbal and written ~~language~~ languages;

(e) ~~develop competence and~~ demonstrate a working vocabulary in art production through developing the ability to create and present imaginative and

original artworks ~~ideas and feelings by creating images in~~ with a concentration of one or more of the visual art forms;

(f) use appropriate art technologies as tools of expression, research, and assessment; and

(g) ~~comprehend and appropriately use copyright laws in relation to original art works and reproductions;~~ demonstrate an awareness of copyright purposes and practices, reproduction, and diverse methods of appropriation, including cultural appropriation.

~~(h) develop sequential visual arts curricula with a mission and scope that assures student development and competence in a variety of media.~~

(2) The program requires that successful candidates demonstrate an understanding of:

(a) the stages of artistic development of children, adolescents, and young adults as these relate to art curriculum, and ensuring that the scope and sequence of the curriculum is ~~age~~ developmentally appropriate;

(b) and (c) remain the same.

(d) budgeting and purchasing; ~~and~~

(e) remains the same.

(f) appropriate assessment strategies for evaluating student progress and accomplishments in the visual and media arts as aligned to the Montana standards for visual arts, as well as other standards where the arts are integrated with technology and the content areas;

(g) remains the same.

(h) diverse career opportunities in art and art related fields to provide encouragement and advice to students about future options.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.505 BUSINESS EDUCATION (1) The program requires that successful candidates:

(a) create, analyze, revise, and implement business education curricula that ~~facilitates the learning of dynamic~~ communicates the challenges and opportunities for students in a global economy and the impact of evolving demographic trends, international competition, and technological innovation within subject matter in diverse learning environments;

(b) ~~build professional relationships with stakeholders to produce a relevant learning environment that reflects the~~ develop partnerships with members of the educational, business, and other communities to improve programs, develop new programs, ensure a curriculum based on real world ~~and provides benefits to the student and the community,~~ experience, and provide students access to advanced learning opportunities including development of career pathways and work-based learning experiences;

(c) demonstrate the development of personal and leadership competencies (~~e.g.,~~ including, but not limited to, citizenship, personal development, goal setting, and collaboration);

(d) demonstrate and apply ethical professional practice based on the principles ~~and philosophy~~ of business education and career and technical education through civic engagement, advocacy, and active participation in professional development and professional growth activities;

(e) integrate professional ~~student~~ student-directed organizations into the curriculum to provide an environment in which students grow professionally, personally, and socially; involve the business and professional community; and recognize the organization provides opportunities for personal growth and leadership development;

(f) identify ~~methods for selection~~ and ~~application of~~ demonstrate appropriate technology tools ~~relating~~ to enhance academic, business, and personal ~~and business~~ decision making, including, but not limited to, current and emerging devices, input technologies, operating systems, applications, digital media, and web development and design;

~~(g) demonstrate and apply the use of current and emerging technologies used by business, industry, and education;~~

~~(h)~~ (g) demonstrate effective communication skills to facilitate learning, incorporate quality standards in all forms of communications, and recognize that ~~culture impacts~~ business communication is founded on respect, fairness, and honesty;

~~(i)~~ (h) determine the nature and extent of the information needed, access needed information effectively and efficiently, and evaluate information and its sources critically;

~~(j)~~ (i) demonstrate ethical and social responsibility related to all elements of business and the legal framework for personal, business, and social interactions;

~~(k)~~ (j) ~~identify careers and~~ promote student access and use a variety of resources to gather information, present personal data, and explore educational and career opportunities in business and related occupational fields;

~~(l)~~ (k) demonstrate the importance of employment communications to career success ~~(e.g.,~~ including, but not limited to, resume, application letter, application forms and online application system, follow-up letter, electronic database employment search engines~~)~~, interview techniques, and the skills needed to successfully obtain and maintain employment;

~~(m)~~ (l) assess ~~student interests, aptitudes, personal qualities,~~ students' personal skills, abilities, and aptitude for a career; use career resources to explore opportunities in business, develop workplace expectations, assist students in transitioning from school to work, and other information necessary for students to make informed career choices;

~~(n)~~ (m) demonstrate effective techniques for managing employees, personnel relations, and the budgeting of time and resources;

~~(o)~~ (n) apply marketing concepts through responsible marketing practices, including usage of marketing technologies and management fundamentals;

~~(p)~~ (o) organize, manage, and synthesize information to make wise business decisions;

~~(q)~~ (p) demonstrate techniques for business problem solving and critical thinking skills needed to function as citizens, consumers, workers, managers, business owners, and directors of their own economic futures;

~~(r)~~ (q) apply interpersonal, teamwork, and leadership skills necessary to function with professionalism in multicultural business and social settings;

(r) develop an understanding of legal principles and systems, and how law impacts commerce, society, regulations, and participation in the global business environment;

(s) demonstrate an awareness of the interrelatedness of ~~one country's political~~ policies and economic practices on ~~another~~ other nations, including interactions with sovereign tribal nations, and an understanding of the global business environment, including the ~~interconnectedness of~~ connection among social, cultural, political, legal, economic, ~~and~~ ethical, and technological systems;

(t) through (v) remain the same.

(w) demonstrate accounting procedures and ~~use of~~ application of generally accepted accounting principles, accounting tools, strategies, and systems to maintain, monitor, control, and plan the use of financial resources;

(x) remains the same.

(y) demonstrate understanding of professional behavior by respecting intellectual property, personal privacy, and information security;

~~(y)~~ (z) develop students' ability to analyze, synthesize, evaluate, and apply technologies to solve problems, increase productivity, and improve quality of life; and

~~(z)~~ (aa) demonstrate the different functional areas of business as interrelated parts rather than distinct and separate entities.

AUTH: 20-2-114, 20-2-121, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.507 THEATRE (1) through (2)(a) remain the same.

(b) the relationship ~~between~~ among the ~~actor~~ practitioner, the literature, and the audience, including the ~~actor's~~ practitioner's ability to assess personal growth; and

(c) through (5) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.509 ENGLISH/LANGUAGE ARTS (1) through (1)(b) remain the same.

(c) plan, implement, assess, and reflect on English/language arts and literacy instruction that promotes critical thinking and creative engagement with complex issues ~~related to social justice, diversity, and democracy~~;

(d) through (m) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.510 ~~STUDENTS WITH DISABILITIES~~ SPECIAL EDUCATION P-12 (1) and (1)(a) remain the same.

(b) ~~understand how~~ demonstrate the ability to create and implement personalized, safe, respectful, inclusive, and culturally responsive learning ~~environments for all individuals with exceptionalities to become active and effective learners with positive social interactions, self-determination, and healthy well-being;~~ that:

(i) is based on ongoing analysis of student learning, self-reflection, and professional standards, research, and contemporary practices;

(ii) allows all individuals with exceptionalities to become active, effective learners with positive social interactions, self-determination, and healthy well-being;

(c) ~~use~~ demonstrate knowledge of ~~general and specialized curricula, including curricula~~ standards used in Montana schools~~,~~ and the ability to use general and specialized curricula to implement individualized learning opportunities that align with the needs of students with exceptionalities;

(d) use multiple methods of assessment and data sources to evaluate and identify individualized learning needs and make a variety of education decisions, including: ~~(i.e., administer and score standardized assessments, interpret and present assessment results, write Present Levels of Academic Achievement and Functional Performance (PLAAFPS) (34 CFR 300.320(a)(1)), write measurable goals and objectives, and use data to monitor progress);~~

(i) ability to identify, collect, and understand quantitative and qualitative data;

(ii) ability to accurately prepare Present Level of Academic Achievement and Functional Performance;

(iii) ability to accurately prepare Measurable Annual Goals,

(iv) ability to accurately administer, score, and analyze the results of formative, summative, and standardized assessments; and

(v) ability to accurately interpret and present the assessment results and make ongoing adjustments to instruction;

(e) select, adapt, and use a repertoire of evidence-based instructional strategies including explicit, systematic instruction, ~~and~~ assistive technology, whole group instruction, small group instruction, and individual instruction to support and self-regulate learning ~~to advance learning of individuals with exceptionalities~~;

(f) ~~guide professional practices by using~~ use foundational knowledge of the field along with professional ethics and standards;

(g) collaborate, ~~and~~ communicate, and advocate in culturally responsive ways with all individuals involved in the special education process to improve programs, services, and outcomes for individuals with exceptionalities and their families ~~(i.e., facilitating meetings, scheduling services, implementing accommodations and modifications)~~, including, but not limited to, facilitating meetings, scheduling services, working with paraeducators and related providers, and implementing accommodations and modifications;

(h) demonstrate an understanding of the philosophical, historical, and legal foundations of special education including:

(i) identification of social and cultural movements in special education law;

(ii) knowledge of court cases which shaped special education law; and

(iii) understanding of legal resources to assist decision making;

(i) remains the same.

(j) demonstrate knowledge and understanding of special education laws and regulations, procedural safeguards, ethical concerns, evaluations/documentation, and appropriate instructional strategies and techniques to support students with ~~social-emotional/behavioral needs (e.g., positive behavior intervention plans/supports)~~ social, emotional, and/or behavioral needs through the use of preventative and responsive practices; ~~and~~

(k) demonstrate proficiency in ~~Montana~~ special education procedural competencies including knowledge of state and federal regulations, rules, and processes and knowledge of the state data collection system and state forms; ~~laws along with the 13 legally defined categories, knowledge of the Achievement in Montana (AIM) system and state forms, special education processes, identification of social and cultural movements in special education law, and court cases which shaped special education law, understand legal resources to assist decision making, and the ability to navigate federal and Montana law.~~

(l) demonstrate an understanding of disability categories and characteristics to the extent necessary to use eligibility criteria to make informed decisions concerning learner identification; and

(m) demonstrate the ability to determine service and transitional needs and placement in a least restrictive environment (LRE) in order to ensure a free and appropriate public education (FAPE) once a student has been identified and qualified for services.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.511 WORLD LANGUAGES (1) The program requires that successful candidates:

(a) demonstrate understanding of the major linguistic features of the target language (i.e., phonology, morphology, syntax, semantics) and ~~describe~~ explain the rules that govern the structure, function, and meaning of target language discourse;

~~(b) explain rules for word and sentence formation (e.g., verbal system, agreement, use of pronouns) and provide examples;~~

~~(c)~~ (b) identify and explain pragmatic and sociolinguistic features ~~(e.g.,~~ including, but not limited to, politeness~~,~~ and formal/informal address~~)~~ of the target discourse and identify features for creating coherence and discourse in extended spoken and written texts;

~~(d)~~ (c) demonstrate listening comprehension to understand short conventional narrative and descriptive texts, such as descriptions of persons, places, and things; and narrations about past, present, and future events;

~~(e) in paragraph-length discourse, narrate and describe in the major time frames with some control of aspect;~~

(d) narrate and describe in past, present, and future tenses using connected discourse;

~~(f) handle the linguistic challenges presented by a complication or unexpected turn of events appropriately within the context of a situation;~~

~~(g)~~ (e) deliver oral presentations extemporaneously on familiar literary and cultural topics and those of personal interest, using a variety of strategies to tailor the presentation to the needs of their audience;

~~(h)~~ (f) understand conventional written narrative and descriptive texts~~, such as descriptions of persons, places, and things and narrations about past, present, and future events~~;

~~(i)~~ (g) write narratives, descriptions, and summaries on topics of general interest in all major time frames with ~~good~~ some control of aspect;

~~(j)~~ (h) demonstrate understanding of language as an essential element of culture;

~~(k)~~ (i) demonstrate knowledge of cultural perspectives as reflected in daily living patterns and societal structures, including geography, history, religious, and political systems, literature, fine arts, media, and a variety of cultural products;

~~(l)~~ (j) connect perspectives to the products and practices of a culture as a way to compare the target culture to their own or to compare a series of cultures;

~~(m)~~ (k) interpret and synthesize ideas from literary and other cultural texts that represent defining works in the target cultures;

~~(n)~~ (l) identify themes, authors, historical style, and text types in a variety of media that the cultures deem important to understanding their traditions;

~~(o)~~ (m) provide opportunities for students to connect to the target language and culture through a variety of means, including technology, as a key component of their classroom practice;

~~(p)~~ (n) exhibit ease, originality, and flexibility in applying language acquisition theories to instructional practice, using a wide variety of strategies to meet the linguistic needs of their students at various developmental levels;

~~(q) tailor language use to students' developing proficiency levels and use a variety of strategies to help students understand oral and written input;~~

~~(r)~~ (o) use the target language to the maximum extent in the classroom at all levels of instruction;

~~(s)~~ (p) demonstrate an understanding of the national and state standards for ~~foreign~~ world language learning to make instructional decisions;

~~(t)~~ (q) understand how to integrate interpersonal, interpretive, and presentational modes of communication in instruction;

~~(u)~~ (r) design and use authentic and standards-based performance assessments using the three modes of communication to measure student progress in communicative and cultural competencies; and

~~(v)~~ (s) design a content-based curriculum ~~which~~ that integrates content from other subject areas into instruction~~; and~~.

~~(w) demonstrate knowledge of language proficiency in the second language resulting from the achievement of an appropriate score (at a specific level determined by the degree granting college or university) on an internationally recognized proficiency examination.~~

(2) The classical language program requires that successful candidates:

~~(a) demonstrate knowledge and understanding of the preceding standards;~~

~~(b)~~ (a) demonstrate knowledge and understanding of the specific classical language; and

~~(c)~~ (b) demonstrate knowledge and application of the specific classical language's sounds, structure, and vocabulary rather than on conversational objectives.

~~(3) The English as a Second Language (ESL) program requires that successful candidates:~~

~~(a) demonstrate understanding of language as a system, including phonology, morphology, syntax, pragmatics, and semantics;~~

~~(b) use the major language acquisition theories to develop a standards-based ESL curriculum which teaches language and literacy through academic content areas;~~

~~(c) demonstrate understanding of how cultural groups and individual cultural identities affect language learning and school achievement;~~

~~(d) demonstrate understanding of various assessment issues as they affect English language learners (ELLs), such as accountability, bias, special education testing, language proficiency, and accommodations in formal testing situations;~~

~~(e) demonstrate understanding of language proficiency instruments used for identification, placement, and reclassification of ELLs;~~

~~(f) demonstrate the ability to build partnerships with colleagues and students' families, serve as community resources, and advocate for equal access to educational resources for ELLs; and~~

~~(g) demonstrate successful completion of a two-year program, or the equivalent experience, in learning a second language.~~

~~(4)~~ (3) The Native American language program and culture specialist licensure requires that successful candidates demonstrate the knowledge of and competence in languages of American Indians and tribes in Montana, as attested by the appropriate tribal authority, pursuant to ARM 10.57.436.

(4) The American Sign Language program requires that successful candidates:

(a) demonstrate understanding of first and second language acquisition;

(b) demonstrate knowledge and application of linguistics of American Sign Language;

(c) demonstrate understanding of aspects of the deaf culture and community;

(d) demonstrate understanding of methods of teaching American Sign Language;

(e) demonstrate knowledge and application of American Sign Language IV or higher; and

(f) demonstrate understanding of American Sign Language literature.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.513 HEALTH (1) through (1)(m) remain the same.

(n) demonstrate the dispositions and communication skills to facilitate cooperation among ~~health~~ educators, ~~other teachers~~ families, and other appropriate professionals ~~school staff~~;

(o) through (w) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.514 FAMILY AND CONSUMER SCIENCES (1) The program requires that successful candidates:

(a) analyze family, community, and work interrelationships~~,~~; investigate career paths through work-based learning activities; examine family and consumer sciences careers in education and human services, hospitality and food production, and visual arts design;~~, and~~ apply career decision making and transitional processes; and implement service learning;

(b) illustrate how each domain of human well-being ~~including social, economic, financial, emotional, spiritual, physical, and intellectual~~ can be enriched in every family and consumer sciences content area;

(c) ~~manage~~ use local and global resources responsibly to address the diverse needs and goals of individuals, families, and communities worldwide in all family and consumer sciences areas, including, but not limited to, ~~practices related to human, economic, and environmental resources~~ resource management, consumer economics, financial literacy, living environments, and textiles and apparel;

(d) apply culturally responsive principles of ~~early childhood,~~ human development~~,~~ and interpersonal and family relationships to strengthen ~~relationships for~~ individuals ~~in the family, workplace, and communities throughout the life span~~ and families across the lifespan in contexts such as parenting, caregiving, and the workplace;

(e) ~~apply principles of~~ promote nutrition, ~~culinary arts, and sustainability of wellness practices~~ science, and food literacy practices; develop food preparation and production skills in personal and professional settings that enhance individual and family well-being across the lifespan, and address related concerns in a global society;

(f) develop, justify, and implement course curricula that address perennial and evolving family, career, and community issues;~~, and~~ reflect the integrative nature of family and consumer sciences~~,~~; integrate core academic areas; and reflect high quality career and technical education practices ~~across all academic areas~~;

(g) create and implement a safe, supportive, and culturally responsive learning environment that shows sensitivity to diverse needs, values, and characteristics of students, families, and communities, including American Indians and tribes in Montana;

(h) ~~demonstrate~~ engage in ethical professional practice based on the history and philosophy of family and consumer sciences; ~~and~~ relationship to career and technical education through civic engagement, advocacy, and collaboration with other professionals; recruitment and mentoring of prospective and new professionals; and ongoing professional development;

(i) collect student and program data to assess, evaluate, and improve student learning and programs in family and consumer sciences using ~~appropriate~~ evidence-based criteria, standards, and processes;

(j) integrate leadership strategies ~~from Family, Career, and Community Leaders of America (FCCLA) or other sources~~ into the program to develop students'

academic growth, application of family and consumer sciences content, leadership, service learning, and career development; ~~and~~

(k) facilitate ~~each student's~~ students' critical ~~thinking~~ literacy and problem solving in family and consumer sciences through varied instructional strategies and technologies by experiences of modeling ~~and through~~ responsible management of resources in schools, communities, and the workplace~~.~~; and

(l) develop, implement, and demonstrate laboratory policies and procedures based on current industry standards specific to the focus of the course to ensure a culture of safety for students and clients.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.515 INDUSTRIAL ~~TRADES AND TECHNOLOGY EDUCATION~~ TECHNICAL SCIENCES (1) The program requires that successful candidates:

(a) demonstrate knowledge of a curriculum and curriculum design consistent with current national and Montana standards, including:

(i) a mission statement with stated goals and objectives that reflect the intent of industrial trades and technology education programs, as guided by the technical sciences national professional organizations;

(ii) an organized set of concepts, processes, and systems that are technological in nature; ~~and~~

(iii) content orientated toward industrial trades and technology education; and

(iv) classroom and laboratory instruction; experiential, project, and work-based learning; and leadership and personal development;

(b) through (b)(v) remain the same.

(vi) transportation technology, which includes physical-related technology using transportation technologies to maintain contact and exchange ~~among~~ between individuals and societal units through the movement of material, goods, and people; ~~and~~

(vii) identification of a level and scope of entry level skills in the use of tools, instruments, and machines necessary for successful teaching; and

(viii) energy and engineering technology, including information related to engineering and robotics;

(c) through (j) remain the same.

(k) apply and use content knowledge from other disciplines to ~~solve~~ address individual and social problems ~~inclusive of gender equity and culturally sensitive opportunities~~;

(l) remains the same.

(m) ~~demonstrate and apply safe laboratory skills including OSHA 10 requirements, with emphasis on the facilities, personal safety equipment, and environmental concerns~~ demonstrate the skills and abilities to develop, utilize, and manage dedicated educational facilities with current and emerging equipment, resources, library media, and electronic technology, and maintain a safe environment, and create a culture of safety during classroom, laboratory, and supervised industrial technical experiences;

(n) and (o) remain the same.

(p) ~~demonstrate a knowledge of the value of building professional relationships with stakeholders to produce a relevant learning environment and provide benefits to the student and the community including development of career pathways and work-based learning experiences~~ demonstrate knowledge of experiential, project, and work-based learning by enhancing student learning through continuous experiential, project, and work-based learning experiences with community stakeholders;

(q) ~~articulate industrial trades and technology education to the school and the local community~~ demonstrate knowledge of program marketing by engaging key stakeholders through involvement, recognition, and the sharing of information about all components of the program;

(r) and (s) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.516 JOURNALISM (1) through (1)(m) remain the same.

(n) develop a plan and apply strategies on how to ~~organize staffs~~ recruit and develop a student journalism staff and demonstrate skills in leadership and group dynamics;

(o) through (q) remain the same.

(r) integrate a variety of instructional strategies, materials, and technologies appropriate to the breadth of journalism content and the individual needs of students; ~~and~~

(s) incorporate instruction in reading literacy and writing literacy in journalism as required by the Montana Content Standards, understanding that course organization needs to allow continuous student learning~~.~~; and

(t) design a variety of assessment tools that guide students in assessing their learning.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.517 LIBRARY MEDIA K-12 (1) The program requires that successful candidates:

(a) demonstrate the ability to collaboratively design, implement, and assess~~,~~ ~~and evaluate an~~ information literacy ~~program that prepares independent lifelong learners and includes the ability to demonstrate collaboration techniques with students and staff in the development and implementation of K-12 curriculum~~ efforts that engage diverse learners in critical thinking and inquiry processes;

(b) remains the same.

(c) promote reading for learning and enjoyment by demonstrating the ability to:

(i) ~~manage~~ curate library collections through evaluation, selection, acquisition, and organization of all formats of library materials;

(ii) collaborate with teachers and students ~~in the selection of reading materials in print and digital formats~~ to ensure that the collection meets the interest of all learners and is aligned to state standards; and

(iii) select materials which reflect knowledge of current youth literature, support a wide range of information needs and interests, and support American Indians and tribes in Montana; and

~~(d) demonstrate knowledge of technical services and the policies and procedures that govern these services; and~~

~~(e)~~ (d) model and facilitate the effective and ethical use of ~~current and emerging digital~~ information ~~tools to locate, analyze, evaluate, and efficiently and ethically use information to~~ and use varying instructional strategies and technologies to support research, learning, creating, and communicating in a digital society.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.518 MATHEMATICS (1) through (1)(b) remain the same.

(c) ~~demonstrate an appreciation for~~ promote mathematical rigor and inquiry;

(d) remains the same.

(e) demonstrate understanding of the mathematical modeling process by interpreting, ~~and~~ analyzing, and explaining mathematical results and models in terms of their reasonableness and usefulness;

(f) through (i) remain the same.

(j) demonstrate content knowledge in:

(i) remains the same.

(ii) different perspectives on algebra including knowledge and understanding of algebraic structures, basic function classes, functional representations, algebraic models and applications, formal structures ~~and results in abstract algebra,~~ and linear algebra;

(iii) through (vii) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.521 READING SPECIALISTS K-12 (1) The program requires that successful candidates:

(a) ~~understand the~~ demonstrate knowledge of the role of the reading/literacy specialist in schools, and the Montana Content Standards and how they interrelate with the major theoretical, conceptual, historical, and evidence-based foundations of literacy and language including: ~~theoretical and evidence-based foundations of reading and writing processes and instruction as outlined in the Montana Content Standards, including:~~

(i) ~~understanding of the historically shared knowledge of the profession and changes over time in the perceptions of reading and writing development, processes, and components~~ the components of reading, including, but not limited to, concepts of print, phonological awareness, phonics, word recognition, fluency,

vocabulary, and comprehension through the development of reading throughout the grades and the relationship with other aspects of literacy;

(ii) ~~understanding of the role of analyzing data and adjusting instruction for improving all students' reading development and achievement in order to meet the needs of individual learners~~ the aspects of writing development and writing processes, including, but not limited to, revising and audience, and writing foundational skills, including, but not limited to, spelling sentence construction and word processing through the development of writing throughout the grades and the relationship with other aspects of literacy; ~~and~~

(iii) ~~demonstrating knowledge and awareness of the distinct and unique cultural heritage of American Indians and tribes in Montana~~ the components of language, including, but not limited to, language acquisition, structure of language, conventions of standard English, vocabulary acquisition and use, speaking, listening, viewing, and visually representing through the development of language throughout the grades and the relationship with other aspects of literacy; and

(iv) the knowledge and awareness of the distinct and unique cultural heritage of American Indians and tribes in Montana;

(b) through (b)(ii) remain the same.

(iii) developing and implementing strategies to advocate for ~~equity~~ equality of opportunity;

(c) use ~~instructional approaches, materials, and an integrated comprehensive, balanced curriculum to support student learning in reading and writing~~ foundational knowledge to design literacy curricula to meet the unique needs of learners by:

(i) ~~utilizing foundational knowledge to design or implement an integrated, comprehensive, and balanced curriculum~~ designing, selecting, critiquing, adapting, and evaluating evidence-based literacy curricula that meet the needs of all learners;

(ii) ~~utilizing appropriate and varied instructional approaches, including those that develop word recognition, language comprehension, strategic knowledge, and reading/writing connections, including the use of appropriate technology; and~~ designing, selecting, adapting, teaching, and evaluating evidence-based instructional approaches, using both informational and narrative texts to meet the literacy needs of whole class and groups of students in the academic disciplines and other subject areas, and when learning to read, write, listen, speak, view, or visually represent;

(iii) ~~utilizing a wide range of texts (e.g., narrative, expository, and poetry) from traditional print, digital, and online resources;~~ selecting, adapting, teaching, and evaluating evidence-based, supplemental, and intervention approaches and programs while using instruction that is explicit, intense, and provides adequate scaffolding to meet the literacy needs of individual and small groups of students, especially those who experience difficulty with reading and writing; and

(iv) demonstrating the ability to collaborate with school-based educators in developing, implementing, and evaluating literacy instructional practices and curriculum;

(d) ~~use a variety of assessment tools and practices to plan and evaluate effective reading and writing instruction~~ understand, select, and use valid, reliable, fair, and appropriate assessment tools to screen, diagnose, and measure student

literacy achievement; inform instruction and evaluate interventions; assist teachers in their understanding and use of assessment results; and advocate for appropriate literacy practices to relevant stakeholders by:

(i) understanding ~~types of assessments and their purposes, strengths, and limitations~~ the purposes, attributes, formats, strengths/limitations (including, but not limited to, validity, reliability, inherent language and culture, and dialect), and influences of various types of tools in a comprehensive literacy and language assessment system and applying that knowledge when using assessment tools;

(ii) ~~selecting, developing, administering, and interpreting assessments, both traditional print and electronic, in order to make decisions based on data~~ collaborating with colleagues to administer, interpret, and use for decision making student assessment, instruction, intervention, and evaluation for individuals and groups of students; ~~and~~

(iii) ~~using assessment information to plan, evaluate, reflect on, and adjust instruction;~~ participating in and leading professional learning experiences to assist teachers in selecting, administering, analyzing, interpreting assessments, and using results for instructional decision making in classrooms and schools;

(iv) using both written and oral communication to explain assessment results and advocate for appropriate literacy and language practices to a variety of stakeholders, including students, administrators, teachers, other educators, and parents/guardians;

(e) ~~create a literate environment that fosters reading and writing by integrating foundational knowledge, instructional practices, approaches and methods, curriculum materials, and the appropriate use of assessments~~ meet the developmental needs of all learners and collaborating with school personnel to use a variety of print and digital materials to engage and motivate all learners; integrating digital technologies in appropriate, safe, and effective ways; and fostering a positive climate that supports a literacy-rich learning environment by:

(i) ~~designing the physical environment to optimize students' use of traditional print, digital, and online resources in reading and writing instruction~~ consulting with families and colleagues to meet the developmental needs of all learners;

(ii) ~~designing a social environment that is low risk and includes choice, motivation, and scaffolded support to optimize students' opportunities for learning to read and write; and~~ collaborating with school personnel and providing opportunities for student choice and engagement with a variety of print and digital materials to engage and motivate all learners;

(iii) ~~utilizing routines to support reading and writing instruction (e.g., time allocation, transitions from one activity to another, discussions, and peer feedback).~~ integrating digital technologies into their literacy instruction in appropriate, safe, and effective ways and assisting colleagues in these efforts;

(iv) facilitating efforts to foster a positive climate that supports a literacy-rich learning environment; and

(f) demonstrate ability to work collaboratively with individuals and groups of colleagues; demonstrate their coaching skills; and advocate on behalf of, students and families by:

(i) designing, facilitating, and leading professional learning experiences for groups including, but not limited to, data team meetings, professional learning

communities, grade-level teams, academic department teams, and workshops while using collaborative data collection, analysis, and decision-making processes;

(ii) using their knowledge of adult learning to support teacher inquiry and reflectivity through coaching tools and processes including, but not limited to, modeling, problem solving, observation feedback cycles, and coteaching in their work with teachers; and

(iii) facilitating and working with teachers and other school leaders to advocate on behalf of students and families, for effective literacy programs, practices, and policies.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.522 SCIENCE (1) through (2)(a) remain the same.

(i) recent significant changes in the field, as reflected by Montana Science Content Standards, the science framework and their impact on the content knowledge necessary for teaching K-12 students;

(ii) through (7) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.523 SOCIAL STUDIES (1) The social studies program ensures that successful candidates follow the subject-major/minor program of study or the broadfield major program of study. Subject-major/minor teaching endorsement programs are limited to history, government, economics, geography, psychology, and sociology. The broadfield social studies teaching endorsement shall include a concentration in history and government and additional content chosen from economics, geography, psychology, sociology, Native American studies, or anthropology. The social studies disciplines adhere to a thorough grounding in the basic philosophy, theory, concepts, and skills associated with Montana ~~and national~~ standards.

(2) and (2)(a) remain the same.

(b) demonstrate knowledge of and ability to plan instruction based on state and national social studies curriculum standards for civic competence;

(c) demonstrate ability to select and integrate the content and methods of investigation of history and the social science disciplines, including the use of original historic documents for use in social studies instruction;

(d) demonstrate knowledge of and ability to plan instruction on the history, cultural heritage, and contemporary status of American Indians and tribes in Montana, including an awareness and application of the Montana 7 Essential Understandings Regarding Montana Indians; ~~and~~

(e) demonstrate ability to use a variety of approaches to instruction that are appropriate to the nature of social studies content and goals and to use them in diverse settings with students with diverse backgrounds, interests, and range of abilities~~.~~; and

(f) plan and implement a variety of pedagogical practices that engage students and promote understanding of contemporary events.

(3) The economics endorsement program requires that successful candidates demonstrate knowledge of content and pedagogy related to:

(a) and (b) remain the same.

(c) the basic economic goals for society, through a free market economy, including freedom of choice, personal financial literacy, ethical action, efficiency, ~~equity~~ equality of opportunity, full employment, price stability, growth, and security;

(d) through (d)(iv) remain the same.

(v) the influence of political events on ~~the~~ state, national, and international economic ~~order~~ conditions.

(4) The geography endorsement program requires that successful candidates demonstrate knowledge of content and pedagogy related to:

(a) through (c) remain the same.

(d) the use of maps and other tools of geographical investigation or presentation, including the use of emerging technology, to process and evaluate information from a spatial perspective.

(5) through (8) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.524 COMMUNICATION (1) through (1)(c) remain the same.

(d) demonstrate understanding of diagnostic techniques, assessment, designing, and prescriptions applying formative and summative assessments for improving students' formal and informal communication skills and communicate with students providing appropriate and targeted feedback about their performance in ways that actively involve them in their own learning by encouraging them to analyze their own communication skills;

(e) design instruction that incorporates students' home and a variety of community languages to enable skillful control over their rhetorical choices and language practices for a variety of audiences and purposes;

(f) and (g) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.526 TRAFFIC EDUCATION (1) through (1)(b) remain the same.

(c) demonstrate an understanding of the state requirements regarding vehicle usage ~~(i.e.,~~ including, but not limited to, required and recommended equipment, maintenance, identification, vehicle use and restrictions, licensing, course completion certificates, and insuring~~)~~;

(d) demonstrate an understanding of the general administrative procedures and policies required for conducting an approved traffic education program ~~(i.e.,~~ including, but not limited to, approval and reimbursement forms~~)~~;

(e) through (h) remain the same.

(i) demonstrate an understanding of the consequences resulting from violations ~~(i.e.,~~ including, but not limited to, driving record, loss of driving privilege, higher insurance premiums, and license retesting~~)~~;

(j) remains the same.

(k) demonstrate an understanding of the importance of positive attitudes toward safe driving ~~(i.e.,~~ including, but not limited to, mental, social, and physical tasks performed through a decision-making process~~)~~;

(l) demonstrate an understanding of the safe interaction of all elements of the highway transportation system ~~(i.e.,~~ including, but not limited to, pedestrians, bicyclists, passengers, motorcyclists, drivers, vehicles, and roadways~~)~~;

(m) demonstrate an understanding of the responsibilities of vehicle ownership ~~(i.e.,~~ including, but not limited to, basic mechanical operation, maintenance, and insuring~~)~~;

(n) remains the same.

(o) demonstrate an understanding of current traffic education issues ~~(i.e.,~~ including, but not limited to, parent involvement, zone control, reference points, distracted, drowsy, impaired, and aggressive driving, and graduated driver licensing~~)~~;

(p) and (q) remain the same.

(r) develop a logical scope and sequence plan for training driving skills in the repeated safe operation of a motor vehicle ~~(i.e.,~~ including, but not limited to, controlled but varied situations and environments~~)~~;

(s) demonstrate knowledge, application, and evaluation of specific student competencies ~~(i.e.,~~ including, but not limited to, scanning, vehicle balance and control, roadway markings, maneuvers, intersections, and highways~~)~~;

(t) demonstrate an understanding of specific competencies as defined by recognized agencies and organizations ~~(i.e.,~~ including, but not limited to, the Office of Public Instruction and the American Driver and Traffic Safety Education Association~~)~~;

(u) design educational strategies for visual perceptual skill development ~~(i.e.,~~ including, but not limited to, scanning, zone control, limiting distractions, risk management, and defensive driving principles~~)~~;

(v) and (w) remain the same.

(x) develop a logical scope and sequence plan for a traffic education program that includes the physiological and psychological influences of alcohol and drug abuse and current legislation as they relate to use of the highway transportation system;

(y) through (ac) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.528 COMPUTER SCIENCE (1) through (1)(b)(iii) remain the same.

(iv) knowledge of ~~at least one of the programming languages, C++, Java, C#, or Ada, and one other~~ current programming language and current programming language trends;

(c) through (g)(iii) remain the same.

(iv) and ability to teach social issues related to the use of computers and information systems in society and the principles for making informed decisions including, but not limited to, security, privacy, intellectual property, and equitable access to technology resources~~, gender issues, cultural diversity, differences in learner needs, limits of computing, and rapid change~~; and

(g)(v) and (h) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.531 EARLY CHILDHOOD EDUCATION (1) The program requires that successful candidates:

(a) identify, apply, and reflect on their knowledge of child development by:

(i) ~~demonstrate~~ demonstrating an understanding of ~~young children's~~ early childhood (birth-age 8) characteristics and needs ~~encompassing~~ across multiple, interrelated areas of children's development and learning including physical, cognitive, social, emotional, language, and aesthetic domains as well as learning processes, bilingual/multilingual development, and motivation to learn; and

(ii) understanding and valuing developmental variations, experiences, strengths, interests, abilities, challenges, and approaches to learning for all children;

(b) base their practice on coherent early childhood theoretical perspectives, current understanding of the influence of theory and research about brain growth and development, executive function, motivation, ~~and~~ the importance of play, and dispositions toward learning on development;

(c) apply their understanding of the multiple influences on the contexts of young children's development and learning including family, community, cultural, and linguistic contexts, temperament, approaches, and dispositions to learning (including initiative, self-direction, persistence, and attentiveness), motivation, attachment, economic conditions, health status, opportunities for play and learning, technology and media, and developmental variations;

(d) understand the potential influence of early childhood programs, including early intervention, on short- and long-term outcomes for children; and

(e) demonstrate the ability to use developmental knowledge including strengths of families and children to create physically and psychologically safe learning environments that are healthy, respectful, supportive, and challenging for ~~each child;~~ children, with full family engagement in establishing the most effective environment for their child.

(2) The program ensures that successful candidates identify, apply, and reflect on their knowledge of family and community partnerships by:

~~(f)~~ (a) ~~know~~ knowing about~~, understand,~~ and ~~value~~ valuing the complex characteristics and importance of children's families and communities including home language, cultural values, ethnicity, socioeconomic conditions, family structures, relationships, ~~stresses, childhood trauma and adverse childhood experiences,~~ supports, and community resources;

~~(i) understand the effects of childhood trauma on social, emotional, physical, and behavioral development and be able to demonstrate trauma-informed classroom management strategies; and~~

~~(ii) demonstrate a knowledge of the implications of secondary trauma;~~

~~(g)~~ (b) collaborating with families as equal partners in creating ~~create~~ respectful, reciprocal relationships ~~with families using a range of formal and informal strategies such as home visits, parent-teacher conferences, family nights, and transition planning into and out of early childhood programs including kindergarten~~;

~~(h)~~ (c) ~~promote and encourage~~ promoting and encouraging family ~~involvement~~ engagement in all aspects of children's development and learning including assisting families to find curriculum and refer resources concerning parenting, mental health, health care, and financial assistance; and

~~(i)~~ (d) ~~demonstrate~~ demonstrating essential knowledge and core skills in team building and in communicating with families and colleagues from other disciplines to encourage and value families' participation in curriculum and program development as well as assessment of children's learning~~, including identification of children's strengths and needs;~~.

(3) The program ensures that successful candidates identify, apply, and reflect on their knowledge of observation, documentation, and assessment by:

(a) understanding the importance of different types of developmentally appropriate assessments, including, but not limited to, observation, portfolio assessment, and work samples, as well as the importance of providing play-based experiences for children to demonstrate their skills and abilities;

(b) understanding the goals of assessment to summarize, analyze, and use assessment information gathered to:

(i) learn about children's characteristics, including the unique qualities of American Indians;

(ii) document all children's growth in all developmental domains and promote positive outcomes for each child;

(iii) make data-driven decisions to guide curriculum planning and instruction; and

(iv) evaluate effective curriculum to maximize children's development and learning; and

~~(j) recognize the goals of assessment and summarize, analyze, and use assessment information gathered through ongoing, systematic observations and other informal and formal assessments, including play-based assessments and developmental screenings to:~~

~~(i) learn about children's unique qualities;~~

~~(ii) guide instruction; and~~

~~(iii) evaluate effective curriculum to maximize children's development and learning;~~

~~(k) make ethical considerations when administering and interpreting assessments including:~~

(c) understanding assessments that have established reliability and validity that consider children's development, ability, culture, and language.

~~(i) an understanding of family context and involving families in the assessment process;~~

~~(ii) recognizing the importance of establishing positive conditions for assessment (in familiar settings with familiar people); and~~

~~(iii) avoiding bias and using culturally sensitive assessments that have established reliability and validity;~~

(4) The program ensures that successful candidates identify, apply, and reflect on their knowledge of teaching and engagement by:

(a) utilizing the environment, schedule, and routine as learning opportunities, including:

(i) designing learning centers and interest areas for indoor and outdoor spaces;

(ii) scheduling extended time for play; and

(iii) teaching through individual and small group contexts that personalize the learning for the child;

~~(l)~~ (b) ~~create~~ creating a caring community of learners that:

(i) supports positive relationships among educators, families, and children;

(ii) promotes the development of children's ~~social, emotional, and~~ friendship skills; and

(iii) assists children in the development of security, ~~self-regulation~~ self-discipline, responsibility, and problem solving;

~~(m)~~ (c) ~~utilize~~ utilizing a broad repertoire of developmentally appropriate teaching skills and strategies supportive of young learners, such as:

(i) incorporating play, project based and experiential learning as core teaching practices;

(ii) integrating curricular areas;

(iii) scaffolding learning;

(iv) personalization of learning

(v) teaching through social interactions;

(vi) providing meaningful child choice;

(vii) implementing positive guidance strategies; and

(viii) making appropriate use of technology; and

~~(n)~~ (d) ~~provide~~ providing curriculum and learning experiences that reflect the principles of universal design for learning, the languages, cultures, traditions, and individual needs of diverse families and children, with particular attention to the cultures of the children and families in the classroom and to American Indians and tribes in Montana~~;~~.

~~(o) use a variety of learning formats and contexts to support young learners, including creating support for extended play, creating effective indoor and outdoor learning centers, teaching primarily through individual and small group contexts, and utilizing the environment, schedule, and routines as learning opportunities;~~

(5) The program ensures that successful candidates identify, apply, and reflect on their knowledge of curriculum by:

~~(p)~~ (a) ~~design, implement, and evaluate~~ designing, implementing, and evaluating developmentally meaningful, integrated, and challenging curriculum for each child using professional knowledge, Montana's Early Learning Standards, Montana Content Standards (K-5), and Indian Education for All; and

~~(q)~~ (b) ~~integrate and support~~ integrating and supporting in-depth learning using both spontaneous and planned curricula and teaching practices in each of the academic discipline content areas including language and literacy; science;

mathematics; social studies; the performing and visual arts; health and well-being; and physical development, skills, and fitness by:

(i) through (vi) remain the same.

(vii) demonstrating knowledge, understanding, and use of human movement and physical activity as central elements to foster active, healthy life styles, including health nutrition, and enhanced quality of life for all students~~;~~.

~~(r) base curriculum planning on the understanding of the particular significance of social, emotional, and behavioral development as the foundation for young children's school readiness and future achievements;~~

(6) The program ensures that successful candidates identify, apply, and reflect on their knowledge of professionalism by:

(a) identifying and involving oneself with the distinctive history, values, knowledge base, and mission of the early childhood field to become an informed advocate for all young children and their families.

~~(s)~~ (b) ~~uphold and use~~ upholding and using state and national codes of ethical conduct for the education of young children and other applicable regulations and guidelines ~~to analyze, resolve, and discuss implications of professional ethical dilemmas with respect to the child, family, colleagues, and community~~;

~~(t)~~ (c) ~~collaborate~~ collaborating with multiple stakeholders, including:

(i) through (iii) remain the same.

~~(u)~~ (d) ~~use~~ using formal and informal assessments, early learning professional knowledge, reflection, collaborative relationships, and critical thinking to analyze and continuously improve professional practices with young children and their families;

~~(v) identify and involve oneself with the distinctive history, values, knowledge base, and mission of the early childhood field;~~

~~(w) engage in informed advocacy for young children and the early childhood profession; and~~

~~(x) demonstrate knowledge, skills, and dispositions during well-planned and sequenced clinical experiences working with children and families in two different age groups (3-5 and 5-8) and two types of the settings:~~

~~(i) one of which must include a Kindergarten-3rd grade experience in an accredited school setting for a formal student teaching experience; and~~

~~(ii) the second clinical site may include state-licensed child care centers or homes, Head Start, and community or school-based preschool programs.~~

(e) engaging in continuous, collaborative learning to inform practice; and

(f) developing and sustaining the habit of reflective and intentional practice in their daily work with young children.

(7) The program ensures successful completion of clinical and student teaching experiences that:

(a) are well-planned and sequenced in a variety of settings (i.e., state-licensed child care, Head Start, or community programs);

(b) provide the opportunity to connect early childhood classroom experiences to home and community settings;

(c) include experience in two different age groups (grades 3-6 and grades 5-8); and

(d) include a K-3 student teaching experience in a P-12 school setting.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.532 ELEMENTARY (1) and (1)(a) remain the same.

(b) demonstrate knowledge, understanding, and ~~use~~ application of ~~the~~ central concepts as outlined in Montana content standards~~, tools of inquiry, and structures of content~~ for students across grades K-8 and engage students in meaningful learning experiences that ~~develop students' competence in subject matter and skills for various developmental levels~~ support students in meeting standards;

(c) demonstrate ~~knowledge and understanding of theory and research~~ and apply understandings of the elements of literacy critical for purposeful oral, print, and digital communication; apply knowledge in the areas of language, speaking and listening, reading and writing processes, literature, ~~print and non-print texts, which are inclusive of~~ new literacies, and technology; include texts from and about American Indians and tribes in Montana; ~~and technology, and~~ plan, implement, assess, and reflect on English/language arts and literacy instruction that promotes critical thinking and creates engagement; teach children how to read; and recognize that there are major theories of reading, writing, and communication processes and development, including first and second literacy acquisition; and the role of a heritage language in learning to listen, speak, read, and write in a new language;

(d) demonstrate knowledge, understanding, and ~~use~~ application of the fundamental concepts of physical science, life science, earth~~,~~ and space sciences, and engineering design to design and implement ~~age-appropriate~~ developmentally appropriate inquiry lessons based in the history and nature of science, including tribal ways of knowing and scientific contributions related to tribes in Montana, ~~to teach science,~~ to build student understanding for personal and social applications~~, to convey the nature of science, the concepts in science and technology, the history and nature of science, including scientific contributions of American Indians and tribes in Montana~~;

(e) demonstrate knowledge, understanding, and ~~use~~ utilization/application of the major concepts and procedures that define number and operations in base ten, fractions, operations, algebraic thinking ~~algebra~~, geometry, measurement, data, ~~analysis and~~ ratios and proportional relationships, the number system, expressions and equations, statistics, data science, probability, and functions to engage elementary students in problem solving, reasoning, constructing arguments, communication, connections, and representation~~, including~~ through culturally inclusive instruction, including tribal ways of knowing and lessons and examples relating to American Indians and tribes in Montana;

(f) demonstrate knowledge, understanding, and ~~use~~ application of the major concepts and modes of inquiry from the social studies, including the use of original historic documents, which include the integrated study of history, civics and government, geography, and economics, including personal financial literacy, ~~and an understanding of the social sciences and other related areas~~ to promote elementary students' abilities to make informed decisions as citizens of an interdependent world

that includes ~~a culturally diverse democratic society, including~~ the cultural diversity of American Indians and tribes in Montana~~, and interdependent world~~;

(g) demonstrate knowledge, understanding, and ~~use~~ application of the content, functions, and achievements of dance, music, theater, media arts, and ~~the~~ visual arts as ~~primary media for~~ an essential part of communication, inquiry, perspective, and engagement among elementary students, and culturally diverse performing and visual arts inclusive of the works of American Indian artists and art in Montana;

(h) demonstrate knowledge, understanding, and ~~use~~ application of the major concepts in ~~the subject matter of~~ health education to create opportunities for ~~student development~~ students to develop and practice ~~of~~ skills that contribute to good physical and mental health ~~for all elementary students~~;

(i) demonstrate knowledge, understanding, and ~~use~~ application of human movement and physical activity as central elements to foster students' active, healthy ~~life styles~~ habits in order to promote mental well-being and enhanced quality of life ~~for all elementary students~~;

(j) remains the same.

(k) plan and implement instructional strategies based on knowledge of individual students, families, learning theory, content, connections across the curriculum, curricular goals, and community;

(l) demonstrate understanding of how elementary students, within different populations, including American Indians and tribes in Montana, differ in development and approaches to learning and demonstrate the ability to differentiate instruction ~~for learners of all cognitive abilities~~ to meet the needs of individual students;

(m) remains the same.

(n) demonstrate knowledge and ~~understanding~~ application of ~~individual and group motivation and behavior and apply this knowledge and understanding~~ relationship building and developmentally appropriate behavior responses to create learning communities that foster active engagement in learning, self-motivation, self-discipline, and positive, healthy interactions ~~interaction and to create supportive learning environments~~;

(o) ~~use~~ demonstrate knowledge and ~~understanding~~ application of effective verbal, nonverbal, and media communication techniques in elementary learning environments to foster active inquiry, collaboration, and supportive ~~interaction~~ interactions among students and transparency with students' families; and

(p) demonstrate knowledge and understanding of formative and summative assessments ~~assessment strategies and use this knowledge and understanding~~ to support data-driven decision making to monitor student growth ~~evaluate~~ and ensure the continuous intellectual~~, social-emotional,~~ and physical development of elementary students.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.533 MIDDLE GRADES (4-8) (1) remains the same.

(a) knowledge and understanding of the major concepts, principles, theories, and research related to young adolescent development (grades 4 through 8) and

apply this knowledge and understanding when making curricular decisions, planning and implementing instruction, and participating in ~~middle grades programs and practices~~ professional development activities;

(b) ~~knowledge of young adolescents in the areas of intellectual, physical, nutritional, social, emotional, behavioral, and moral characteristics, individual needs, and interests, and~~ apply ~~this~~ knowledge of young adolescents to create healthy, respectful, supportive, and challenging learning environments for all young adolescents;~~, including those whose language and cultures are different from their own;~~

~~(i) understand the effects of childhood trauma on social, emotional, physical, and behavioral development and be able to demonstrate trauma-informed classroom management strategies;~~

~~(ii) demonstrate a knowledge of the implications of secondary trauma;~~

(c) through (2) remain the same.

(a) knowledge and understanding of theory and research and apply knowledge in the areas of language, speaking, and listening; reading and writing processes; literature, print, and non-print texts, which are inclusive of texts from and about American Indians and tribes in Montana; and effective technology integration; and plan, implement, assess, and reflect on English/language arts and literacy instruction that promotes critical thinking, critical analysis, and creative engagement for young adolescents;

(b) and (c) remain the same.

(d) knowledge, understanding, and use of the major concepts and modes of inquiry from the social studies, the integrated study of history, government, geography, economics including personal financial literacy, and an understanding of the social sciences, including the use of original historic documents, and other related areas to promote middle grades students' abilities to make informed decisions as citizens of a culturally diverse democratic society, including the cultural diversity of American Indians and tribes in Montana, and the interdependent world;

(e) knowledge, understanding, and use of the content, functions, and achievements of the performing arts ~~(dance, music, theater)~~ and the visual arts as primary media for communication, inquiry, perspective, and engagement among young adolescent students, and culturally diverse performing and visuals arts inclusive of the works of American Indian artists and art in Montana;

(f) knowledge, understanding, and use of health enhancement education to create opportunities for middle grades student development and practice of skills that contribute to good ~~physical, social, emotional, and behavioral~~ health for all young adolescents; and

(g) knowledge, understanding, and use of human movement and physical activity as central elements to foster active, healthy habits ~~life styles~~, including health nutrition and enhanced quality of life for all young adolescent students.

(3) and (4) remain the same.

(a) knowledge, understanding, and use of interdisciplinary connections to integrate subject matter contents~~, employing inclusive ideas and issues~~ that engage middle grades students' ideas, interests, concerns, and experiences;

(b) through (f) remain the same.

(g) knowledge and understanding of formative and summative assessment strategies and use this knowledge and understanding to evaluate and ensure the continuous ~~intellectual, social-emotional, behavioral, and physical~~ development of middle grades students.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.604 ADVANCED PROGRAMS (1) ~~Advanced programs are offered at postbaccalaureate levels for~~ Advanced-level preparation is provided through programs at the graduate level leading to licensure, certification, or endorsement. Advanced-level programs are designed to develop P-12 teachers who have already completed initial licensure, currently licensed administrators, and other licensed school professionals for employment in P-12 districts. Advanced programs reviewed include the following:

(a) ~~the continuing education of teachers who have previously completed initial preparation~~ programs for the preparation of school counselors and school psychologists, if the program is not currently accredited through another national approved accreditor; or

(b) ~~the preparation of other school professionals~~ educational leadership programs leading to the preparation of principals, curriculum directors, supervisors, and superintendents.

(2) ~~Advanced programs commonly award graduate credit and include master's, specialist, and doctoral degree programs as well as non-degree educator preparation programs offered at the postbaccalaureate level. Examples of these programs include~~ Advanced-level programs not reviewed include the following:

(a) ~~teachers who are preparing for a second endorsement at the graduate level in a field different from the field in which they had their first endorsement~~ any advanced-level program not specific to the preparation of teachers or other school professionals for P-12 districts;

(b) ~~programs for teachers who are seeking a master's degree in the field in which they teach~~ any advanced-level non-licensure programs, including those specific to content areas, including, but not limited to, M.A., M.S., and Ph.D.; and

(c) ~~programs not tied to endorsement, such as programs in curriculum and instruction; and~~

~~(d) programs for other school professionals such as school counselors, school psychologists, educational administrators, and curriculum directors~~ educational leadership programs not specific to the preparation of teachers or other school professionals for P-12 districts.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.605 ADVANCED CONTENT AND PEDAGOGICAL KNOWLEDGE

(1) The provider ensures that advanced program candidates:

(a) develop ~~a deep~~ understanding of the critical concepts and principles of their discipline and~~,~~ by completion~~,~~ are able to use discipline-specific practices

~~flexibly~~ to advance the learning of all students toward attainment of college- and career-readiness standards specific to their discipline;

(b) demonstrate an understanding of and are able to apply knowledge and skills specific to their discipline to effectively work with all P-12 students and their families;

(c) ~~use research and evidence to develop school environments that support and assess P-12 students' learning and their own professional practice specific to their discipline;~~ demonstrate their proficiencies to understand and apply knowledge and skills appropriate to their professional field of specialization so that learning and development opportunities for all P-12 students are enhanced by:

(i) utilizing data literacy;

(ii) using research and understanding of qualitative, quantitative, and mixed methods research methodologies;

(iii) employing data analysis and/or evidence to develop a supportive learning environment;

(iv) leading and participating in collaborative activities with others such as peers, colleagues, teachers, administrators, community organizations, and parents; and

(v) supporting appropriate applications of technology for their field of specialization; and

(vi) applying laws, policies, and professional standards appropriate to their field of specialization;

(d) ~~apply content and discipline-specific knowledge as reflected in outcome assessments in response to standards of professional associations and national or other accrediting bodies~~ have opportunities to learn and apply specialized content and discipline knowledge contained in approved state and/or national discipline-specific standards; and

(e) demonstrate skills and commitment to creating supportive environments that afford all P-12 students access to rigorous college- and career-ready standards~~; and~~.

~~(f) integrate technology standards to support the design, implementation, and assessments of learning experiences and environments to engage students, improve learning, and enrich professional practice.~~

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.606 ADVANCED CLINICAL PARTNERSHIPS AND PRACTICE

(1) The provider:

(a) ensures that effective partnerships and high-quality clinical practice are central to candidates' preparation ~~so that candidates~~ to develop the knowledge, skills, and professional dispositions necessary to demonstrate positive impact on all P-12 students' learning and development and appropriate for their professional specialty field;

(b) ~~ensures that partners co-construct~~ co-constructs mutually beneficial P-12 school and community arrangements~~, including technology-based collaborations,~~ for

clinical preparation and share responsibility for continuous improvement of advanced program candidate preparation~~. Partnerships~~ by:

(i) ensuring partnerships for clinical preparation ~~can~~ follow a range of forms, participants, and functions~~. They establish~~;

(ii) establishing mutually agreeable expectations for advanced program candidate entry, preparation, and exit; ~~ensure~~

(iii) ensuring that theory and practice are linked~~; maintain~~ by maintaining coherence across clinical and academic components of preparation; ~~and share~~

(iv) sharing accountability for advanced program candidate outcomes; and

(v) to the extent possible, providing opportunities for advanced candidates to complete clinical experiences in the district and school of their choice, including through recruitment and retention programs adopted by school districts, in accordance with statewide agreements among providers;

(c) ensures that partners co-select, prepare, evaluate, and support~~, and retain~~ high-quality clinical educators, both provider- and school-based, who demonstrate a positive impact on advanced program candidates' development and P-12 student learning and development~~. In collaboration with their partners, providers use multiple indicators and appropriate technology-based applications to establish, maintain, and refine criteria for selection, professional development, performance evaluation, continuous improvement, and retention of clinical educators in all clinical placement settings~~; and

(d) works with partners to design and implement clinical experiences of sufficient depth, breadth, diversity, coherence, and duration to ensure that advanced program candidates demonstrate their developing effectiveness in creating environments that support all students' learning and development. Clinical experiences~~, including technology-enhanced learning opportunities,~~ are structured to have multiple performance-based assessments at key points within the program to demonstrate advanced program candidates' development of the knowledge, skills, and professional dispositions, as delineated in ARM 10.58.605, that are associated with creating a supportive school environment that results in a positive impact on the learning and development of all P-12 students.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.607 ADVANCED CANDIDATE QUALITY, RECRUITMENT, PROGRESSION, AND ~~SELECTIVITY~~ SUPPORT (1) The provider:

(a) demonstrates that the quality of advanced program candidates ~~is a continuing and purposeful part of its responsibility from recruitment, at admission, through the progression of courses and clinical experiences, and to decisions that advanced program completers are prepared to perform effectively and are recommended for licensure where applicable, and demonstrates that development of candidate quality is the goal of educator preparation in all phases of the program~~ is an ongoing and intentional focus so that completers are prepared to perform effectively and can be recommended for certification where applicable;

(b) develops and implements plans and efforts to know and address local, state, regional, and national needs for hard-to-staff schools and shortage fields. The

goals and evidence show progress toward a high-quality advanced candidate pool, which reflects the diversity of Montana's P-12 students ~~presents plans and goals to recruit and support completion of high-quality advanced program candidates from a broad range of backgrounds and diverse populations to accomplish its mission:~~

~~(i) admitted candidates reflect the diversity of Montana's P-12 students; and~~

~~(ii) the provider demonstrates efforts to know and address local, community, tribal, Montana, regional, or national needs for school and district staff prepared in advanced fields~~;

(c) sets admissions requirements, including ~~the CAEP~~ a minimum GPA of 3.0 of the average grade point average of its accepted cohort of candidates, and gathers data to monitor applicants and selected pool of candidates, and designs the selection to completion policy that includes multiple assessment measures to determine admission, continuation in, and completion of programs, ~~providing~~ using data points that are valid and reliable predictors of advanced candidate success and demonstrate that the standard for high academic achievement and ability is met through multiple evaluations and sources of evidence~~:~~

~~(i) data points are reliable and valid predictors of candidate success and demonstrate that the standard for high academic achievement and ability is met through multiple evaluations and sources of evidence; and~~

~~(ii) these data are regularly and systematically compiled, summarized, and analyzed to improve the applicant pool, and candidate performance, program quality, and unit operations~~;

(d) ~~establishes and~~ monitors ~~attributes and~~ dispositions beyond academic ability that advanced program candidates must demonstrate at admissions and during the program~~, and selects criteria, describes the measures used and evidence of the reliability and validity of those measures, and reports data that show how the academic and non-academic factors predict advanced program candidate performance in the program and in service; and~~ using valid and reliable measures;

(e) creates criteria for program progression and ~~monitors candidates' advancement~~ uses data to monitor advanced candidates from admissions through completion. ~~All advanced program candidates demonstrate the ability to create and maintain supportive environments for teaching college- and career-ready standards. Providers present multiple forms of evidence to indicate advanced program candidates' application of content knowledge and research, data-informed decision making, and the integration of technology in all of these domains.~~ The provider ensures that knowledge of and progression through transition points are transparent to candidates. The provider documents the need for candidate support, so advanced candidates meet milestones; and

(f) implements a system for effectively maintaining records of advanced candidate formal complaints and resolution documentation.

(2) ~~Prior~~ Ensuring that prior to recommending any advanced program candidate for program completion, the provider documents that the advanced program candidate:

(a) ~~has reached a high standard for content knowledge, data- and research-informed decision making, integration of technology in the discipline, and demonstrates the ability to create, maintain, and enhance supportive environments for effective P-12 learning~~ possesses academic competency to help facilitate

learning with positive impacts on all P-12 student learning and development through application of content knowledge, data literacy and research-driven decision making, effective use of collaborative skills, and application of technology in the field(s) where certification is sought; and

(b) understands the expectations of the profession, including ~~codes of ethics~~ ethical conduct, professional standards of practice, and relevant laws and policies.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.608 ADVANCED PROGRAM ~~IMPACT~~ SATISFACTION WITH PREPARATION (1) The provider:

~~(a) demonstrates the impact of its completers on P-12 student learning and development, classroom instruction, and schools, and the satisfaction of its completers with the relevance and effectiveness of their preparation;~~

~~(b) documents advanced program completers' impact on P-12 student learning and development using state-supported P-12 data and other measures employed by the provider, including employer surveys, and program completer surveys;~~

~~(c) demonstrates, through structured and validated observation instruments and surveys, which completers effectively apply the professional knowledge, skills, and dispositions that the preparation experiences were designed to achieve;~~

~~(d)~~ (a) demonstrates, using ~~measures that result in~~ valid and reliable data that employers are satisfied with the advanced program completers' preparation for their ~~assigned~~ responsibilities ~~in~~ working with P-12 students and their families; and

~~(e)~~ (b) demonstrates, using ~~measures that result in~~ valid and reliable data, that advanced program completers perceive their preparation as relevant to the responsibilities they ~~confront~~ encounter on the job, and that the preparation was effective.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.609 ADVANCED PROVIDER QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT (1) The provider:

(a) ~~maintains~~ develops a quality assurance system ~~comprised~~ that consists of valid and reliable data from multiple measures~~, including evidence of candidates' and completers' positive impact on P-12 student learning and development;~~ that documents the advanced program's operational effectiveness and supports continuous improvement that is sustained and evidence-based~~, and that evaluates the effectiveness of its completers; and~~. The provider uses the results of inquiry and data collection to establish priorities, enhance advanced program elements and capacity, and ~~test~~ highlight innovations ~~to improve completers' impact on P-12 student learning and development~~;

(b) ~~develops~~ implements and maintains a quality assurance system ~~which is~~ comprised of multiple measures~~,~~ that can monitor advanced program candidate progress~~, completer achievements,~~ and provider operational effectiveness. The

provider documents the process of data entry and how data are reported and used in decision making to make advanced programmatic improvement;

(c) ensures that ~~its~~ the quality assurance system relies on ~~data that are~~ relevant, verifiable, representative, cumulative, and actionable measures ~~provides specific guidance for improvement, and produces empirical evidence that~~ to ensure interpretations of data are valid and consistent;

(d) regularly and systematically assesses advanced program performance against its goals and relevant standards, ~~tracks~~ monitors results over time, tests innovations, ~~and the effects of selection criteria on subsequent progress and completion,~~ and uses results to improve program elements and processes;

(e) ensures that data from the quality assurance system ~~measures of advanced program completer impact on the P-12 learning environment, including available outcome data,~~ are based on established best practices, summarized, analyzed, shared widely, and acted upon in decision making related to advanced programs, resource allocation, and future direction; and

(f) assures that ~~appropriate~~ internal and external stakeholders, including, but not limited to, faculty, staff, candidates, completers, ~~alumni,~~ employers, practitioners, and school and community partners~~, and others defined by the provider,~~ are ~~involved~~ engaged in advanced program design, evaluation, and continuous innovative improvement processes~~, and identification of models of excellence~~.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.610 SCHOOL COUNSELING K-12 (1) through (1)(d) remain the same.

~~(e) demonstrate knowledge of the role of ethnic and cultural heritage, nationality, socioeconomic status, family structure, age, gender, sexual orientation, religious and spiritual beliefs, occupation, physical and mental status, and equity issues in school counseling, including American Indians and tribes in Montana;~~

~~(f)~~ (e) demonstrate competence in the coordination of school counseling program components and understand how they are integrated within the school community in collaboration with the efforts of other educators and agencies, as well as the roles of leaders, advocates, and systems change agents in schools;

~~(g)~~ (f) demonstrate competence in elementary, middle, and high school counseling in:

(i) planning, designing, implementing, and evaluating a comprehensive and developmental school counseling program that includes mission statements and objectives;

(ii) appraising and interpreting interviews, observations, and formal assessments ~~(e.g.~~ including, but not limited to, aptitude, interest, achievement, and personality tests~~)~~ and other assessments relevant to K-12 education;

(iii) promoting student success using strategies and interventions that address academic development, career counseling, school and life transitions, promotion and graduation rates, college and career readiness~~, equity in academic achievement, as well as skills to critically examine the connections between social, familial, emotional, and behavioral issues and academic achievement~~;

(iv) utilizing a variety of developmentally appropriate intervention strategies in individual, family, and group contexts such as personal/social counseling, parent conferences, teaching ~~guidance~~ curriculum lessons using lesson planning and classroom management strategies, training and overseeing peer intervention programs, and other strategies that foster collaboration and teamwork in schools;

(v) and (vi) remain the same.

(vii) managing school counseling programs by using accountability data to inform decision making to advocate for students and programs, analyzing, and presenting educational research, performance, and evaluation data ~~(e.g.,~~ including, but not limited to, standardized test scores, grades, retention, and placement~~)~~ that advocate for students and programs;

(viii) demonstrating new knowledge and skills, and refining existing skills through professional renewal ~~(e.g.,~~ including, but not limited to, self-reflection, continuing education, and professional development~~)~~;

(ix) through (xii) remain the same.

~~(h)~~ (g) demonstrate knowledge of, and apply the laws (state and federal), policies, and legislation that affect student placement, follow-up and program planning, as well as the ethical issues related to the school counseling field~~,~~ ~~specifically the ethical standards of the American School Counselor Association (ASCA)~~; and

~~(i)~~ (h) demonstrate knowledge of the ~~ASCA~~ American School Counselor Association national standards ~~for student development~~ related to mindsets and behaviors for student success (academic, career, and personal/social developmental domains) and demonstrate competence integrating ~~the~~ these national standards throughout the school counseling program.

(2) through (2)(c) remain the same.

(d) an internship of 240 hours of supervised direct service to K-12 students performing a variety of school counseling activities related to a school counseling program that may include ~~delivering guidance curriculum (classroom teaching), student planning (academic, career, or personal/social), responsive services (counseling and referral), and system support (management and consultation)~~ designing and implementing developmentally appropriate classroom lessons, individual student planning (assisting students in the development of educational, career, and personal plans), responsive services (groups, individual counseling, and crisis response), indirect student services (referrals, consultation, and collaboration), and program planning and school support;

(e) through (g) remain the same.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.705 SCHOOL PRINCIPALS, SUPERVISORS, AND CURRICULUM DIRECTORS (1) and (1)(a) remain the same.

(b) promote the development of the full educational potential and well-being of each person through our public schools by advocating, nurturing, and sustaining positive school culture and instructional program conducive to student learning; staff

professional growth based upon current brain-based research for effective teaching and learning; and exhibiting genuine concern for students and:

(i) through (v) remain the same.

(c) ensure proper management of the organization, operations, and resources for a safe, efficient, and effective learning environment to develop the full educational potential and well-being of each person with the use of data and time management and:

(i) through (iii) remain the same.

(d) collaborate with families and other community members, respond to diverse community interests and needs, including American Indians and tribes in Montana and mobilize community resources in order to fully develop the educational potential and well-being of each person and:

(i) through (iii) remain the same.

(e) act with integrity, fairness, and in an ethical manner in order to develop the full educational potential and well-being of each person through our public schools by exhibiting open-mindedness, integrity, consistency, and ethics; ~~and:~~

~~(i) ensure a system of accountability for every student's academic, social, and emotional success;~~

~~(ii) model principles of self-awareness, reflective practice, transparency, and ethical behavior;~~

~~(iii) safeguard the values of democracy, equity, and diversity; and~~

~~(iv) consider and evaluate the potential moral and legal consequences of decision making and promote social justice to ensure that individual student needs inform all aspects of schooling;~~

(f) understand, respond to, and influence the larger political, social, economic, legal, and cultural context in order to develop the full educational potential and well-being of each person through our public schools and assess, analyze, and anticipate emerging trends and initiatives in order to advocate for children, families, and caregivers by acting to influence local, district, state, and national decisions affecting student learning through the knowledge of community, understanding of political climate, and community relations and resources; and

(g) remains the same.

AUTH: 20-2-114, MCA
IMP: 20-1-501, 20-2-121, MCA

10.58.706 SUPERINTENDENTS (1) The successful candidate completes the requirements of ARM 10.58.705 and the following requirements. The program requires that successful candidates:

(a) ~~facilitate the development, articulation, implementation, and stewardship of a school and/or district vision of learning supported by the school community and:~~

~~(i)~~ collaboratively develop, implement, and promote a commitment to a shared district vision and mission integrated throughout the school system by strategic planning, aligning districtwide curriculum, and facilitating policy-making processes;

~~(ii)~~ (b) promote continuous and sustainable district improvement by using data to inform goals, assess organizational effectiveness, and promote

organizational learning and designing~~,~~; implementing, assessing, and adjusting plans to achieve goals; and

~~(iii)~~ (c) demonstrate skill in working with school boards;

~~(b)~~ (d) promote the development of the full educational potential of each person through our public schools by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth; ~~and:~~

~~(i) advocate, nurture, and sustain a culture of collaboration, trust, learning, and high expectations to create a comprehensive, rigorous, and coherent curricular program that addresses post-secondary and life readiness through district academic standards~~;

~~(ii)~~ (e) develop the instructional and leadership capacity of staff in order to create a personalized and ~~motivated~~ motivating learning environment for students through comprehensive professional learning opportunities with principals and leaders;

~~(iii) appraise, support, and supervise instruction in accordance with state standards and associated accountability systems by fostering a culture of continuous improvement which promotes growth and informs practice and promotes learning with multiple measures through district/state standards-based systems;~~

~~(iv)~~ (f) develop districtwide assessment and accountability systems to monitor and evaluate student progress and the impact of the instructional programs; ~~and~~

~~(v)~~ (g) maximize instructional time, use appropriate and effective instructional strategies and technologies to support teaching and learning through principal supervision and evaluation and developing principal leadership skills;

~~(c) ensure proper management of the organization, operations, and resources for a safe, efficient, and effective learning environment to develop the full educational potential of each person and:~~

~~(i)~~ (h) develop the capacity for distributed leadership to ensure teacher and organizational growth to support quality instruction and student learning;

~~(ii)~~ (i) efficiently and effectively use human, fiscal, and capital resources, applying fiscal and management theory;

~~(iii)~~ (j) advocate, promote, and protect the ~~social, emotional, and physical~~ safety of students and staff;

~~(iv)~~ (k) demonstrate knowledge of information systems;

~~(v)~~ (l) demonstrate knowledge of student transportation laws and best practices; and

~~(vi)~~ (m) demonstrate knowledge of Montana school law, Montana school finance, and Montana collective bargaining and employment law;

~~(d)~~ (n) collaborate with families and other community members, respond to diverse community interests and needs, including American Indians and tribes in Montana families, and mobilize community resources in order to fully develop the educational potential and well-being of each person and:

(i) promote family engagement by fostering and sustaining positive relationships with parents, families, caregivers, community members and partners; and

(ii) promote understanding, appreciation, and use the community's diverse cultural, social, and intellectual resources to expand the educational experience; ~~and~~

~~(iii) collect and analyze data and information pertinent to the educational environment~~;

~~(e)~~ (o) act with integrity, fairness, and in an ethical manner in order to develop the full educational potential and well-being of each person through our public schools; ~~and:~~

~~(i) ensure a system of accountability for every student's academic, social, and emotional success;~~

~~(ii) model principles of self-awareness, reflective practice, transparency, and ethical behavior;~~

~~(iii) safeguard the values of democracy, equity, and diversity;~~

~~(iv) consider and evaluate the potential moral and legal consequences of decision making and promote social justice to ensure that individual student needs inform all aspects of schooling; and~~

~~(v)~~ (p) demonstrate knowledge of the Americans with Disabilities Act (ADA) and the ~~Individual~~ Individuals with Disabilities Education Act (IDEA);

~~(f)~~ (q) understand, respond to, and influence the larger political, social, economic, legal, and cultural context in order to develop the full educational potential and well-being of each person through our public schools and assess, analyze, and anticipate emerging trends and initiatives in order to advocate for children, families, and caregivers by acting to influence local, district, state, and national decisions affecting student learning through systemic analysis of issues, knowledge of collective bargaining, marketing strategies, and political and economic trends; and

~~(g)~~ (r) complete an internship/field experience that provides at least 216 hours of significant opportunities to synthesize and apply the knowledge and practice and develop the skills identified in this rule through substantial, sustained, standards-based work in real settings, planned and guided cooperatively by the institution and properly administratively endorsed school district personnel for graduate credit.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.58.707 SCHOOL PSYCHOLOGISTS (1) through (1)(b) remain the same.

(i) applying data-based decision making and accountability through varied models and methods of assessment and data collection for identifying strengths and needs~~,~~; developing effective interventions, services, and programs, and measuring progress and outcomes within a multi-tiered system of supports;

(ii) using a problem-solving framework as the basis for all professional activities;

(iii) collecting data systematically from multiple sources as a foundation for decision making at the individual, group, and system levels, and considering ecological factors including, but not limited, to classroom, family, and community characteristics as a context for assessment and intervention;

~~(ii)~~ (iv) applying varied models and strategies of consultation, collaboration, and communication applicable to individuals, families, groups, and systems, and methods to promote effective implementation of services;

~~(iii)~~ (v) applying effective interventions and instructional support to develop academic skills through a thorough understanding of biological, cultural, and social influences on academic skills~~;~~, human learning, cognitive, and developmental processes~~;~~, and evidence-based curricula and instructional strategies;

~~(iv)~~ (vi) applying interventions, as well as ~~and~~ mental and behavioral health services to develop social and life skills to promote ~~social-emotional~~ understanding of biological, cultural, developmental, and social influences on behavior and mental health, behavioral and emotional impacts on learning and life skills, and evidence-based strategies;

~~(v)~~ (vii) understanding individual differences, abilities, disabilities, and other individual student characteristics, principles, and research related to diversity factors for children, families, and schools, factors related to culture, including American Indians and tribes in Montana, context, and individual and role difference; ~~and~~ evidence-based strategies and adaptive skills to enhance services and address potential influences related to diversity in development, ~~and~~ learning, and behavioral health;

~~(vi)~~ (viii) applying evidence-based schoolwide practices, implementation science, systems' structures, ~~and systems~~ organization and theory, policy development, and climate to promote learning, positive behavior, and mental health;

~~(vii)~~ (ix) applying principles and research related to well-being, ~~to~~ resilience, and risk factors in learning and mental and behavioral health, supporting services in schools and communities, multi-tiered prevention, and evidence-based strategies to create and maintain safe, effective, and supportive learning environments for students and school staff ~~for effective crisis response~~;

~~(viii)~~ (x) applying principles and research related to family systems, strengths, needs, and culture; evidence-based strategies to support family influences on children's learning and mental health; and strategies to develop collaboration between families and schools;

(xi) applying evidence-based strategies to enhance services in both general and special education and to address potential influences by providing professional services that promote effective functioning for individuals, families, and schools;

~~(ix)~~ (xii) applying research, design, statistics, measurement, varied data collection and analysis techniques, and program evaluation sufficient for understanding research and interpreting data in applied settings;

~~(x)~~ (xiii) applying the history and foundations of school psychology; multiple service models and methods; ethical, legal, and professional standards; and other factors related to professional identity ~~and effective practice as~~ of school ~~psychologists~~ psychologists' legal, ethical, and professional practice; and

~~(xi)~~ (xiv) integrating information technology into school psychologist practice and utilizing various techniques and technology resources for data collection, measurement, and analysis to support effective practices at the individual, group, and system levels.~~;~~

~~(d) demonstrate knowledge and understanding of orientation to the educational process, assessment for intervention, direct intervention, and indirect intervention.~~

(2) The provider shall ensure candidates complete supervised and sequenced practica experiences that:

(a) ~~practica experiences~~ are distinct from and occur prior to the internship;

(b) ~~practica~~ occur at scheduled time(s), are of sufficient length, and are in settings appropriate and relevant to the specific training program objectives ~~of the program~~ and student competency development;

(c) ~~there is~~ have a direct and obvious relationship ~~between practica experiences and~~ to the objectives for which the practica are intended; are designed collaboratively between the school psychology program and placement agencies; demonstrate a commitment to candidate learning; are consistent with program goals; and ensure the development of professional competencies;

(d) ~~practica experiences~~ occur under conditions of supervision appropriate to the specific training objectives of the program;

(e) ~~practica experiences are provided~~ provide appropriate recognition through the awarding of academic credit;

(f) ~~practica experiences~~ occur with university involvement appropriate to the specific training objectives of the program and have program oversight to ensure appropriate placement, and diverse activities to address national practice model and program objectives, adequate supervision, and collaboration between the practicum site and practicum site supervisors;

(g) ~~the quality of practica experiences is~~ are systematically evaluated in a manner consistent with the specific training objectives of the program and use performance-based evaluations that are systematic and designed to ensure that candidates demonstrate professional work characteristics and competencies; and

(h) ~~practica experiences~~ are conducted in accordance with current legal-ethical standards for the profession~~;~~.

~~(i) candidates demonstrate knowledge of the roles, responsibilities, and functions of other pupil service personnel, including the operation of interdisciplinary teams; and~~

~~(j) candidates demonstrate knowledge of available school and community resources.~~

(3) through (3)(a)(ix) remain the same.

(x) is conducted in a manner consistent with the current legal-ethical standards of the profession; ~~and~~

(xi) remains the same.

(xii) is a diversified learning experience that includes a variety of professional roles and functions for the intern to attain professional competencies through carefully supervised activities;

(xiii) addresses all National Association of School Psychologists (NASP) domains of practice;

(xiv) has a written agreement that specifies the term of appointment terms of compensation;

(xv) supports services for the intern commensurate as to what is provided the agency's school psychologist;

(xvi) provides access to continuing educational activities;

(xvii) has appropriately and regularly scheduled supervision;

(xviii) is provided appropriate recognition through the awarding of academic credit; and

~~(b) complete a field-based internship supervised, on average, at least two hours per week of direct supervision for each intern;~~

~~(c)~~ (b) accept an internship placement that provides appropriate support for the internship experience including:

(i) through (v) remain the same.

(4) The provider ensures that ~~school psychology training programs employ systematic, valid evaluation of candidates, coursework, practica, internship, faculty, supervisors, and resources and use the resulting information to monitor and improve program quality.~~ a school psychology program employs systematic, comprehensive assessment of candidate knowledge, skills, and professional work characteristics needed for effective practice as early-practitioner, independent school psychologists. A key aspect of program accountability is the assessment of candidate ability to provide, and evaluate the impact of, direct and indirect services to children and youth, families, and schools. Faculty must be involved in the evaluation of candidate skill application including, but not limited to, products such as individual, group, or system-wide case studies, program evaluations, and psychoeducational evaluations, and use assessment results to evaluate and improve the program. The provider ensures that school psychology graduate programs ~~shall~~:

(a) establish and maintain an accountability program ~~to assess the knowledge and capabilities of school psychology candidates and of the impact that interns and graduates have on services to children, youth, families, and other consumers~~ that employs a variety of methods to assess the candidate knowledge, skills, and professional work characteristics consistent with the national practice model, including results on licensing exams, course-embedded methods, practicum and capabilities of school psychology candidates intern evaluations, and performance-based products that include assessment of the impact that interns and graduates have on services to children, youth, families, and other consumers;

(b) incorporate different sources of process and performance information ~~(e.g.,~~ including, but not limited to, instructional evaluation, performance portfolios, field supervisor evaluations, systematic valid procedures are used to evaluate and improve the quality of the program, candidate/graduate performance on licensing/certification examinations, and alumni follow-ups~~)~~, as appropriate, to evaluate and improve components of the program. The assessment of practicum outcomes must include a formal evaluation process of all candidates conducted by field supervisors and/or program faculty. The assessment is expected to focus on specific competencies and professional work characteristics and be based on observations or other evaluation methods. The evaluation criteria or benchmark is expected to be relevant to the professional developmental stage of the candidate at the particular level of the practica;

(c) apply specific published criteria, both objective and qualitative, for the assessment and admission of candidates to the program at each level and for candidate retention and progression in the program. ~~The criteria address the academic and professional competencies, as well as the professional work characteristics needed for effective practice as a school psychologist (including respect for human diversity, communication skills, effective interpersonal relations, ethical responsibility, adaptability, and initiative/dependability)~~ The internship outcomes include formative and summative performance-based evaluations

completed by faculty and field-based supervisors that are systematic, address the academic and professional competencies, and ensure that interns attain the competencies, as well as demonstrate the professional work characteristics needed for effective practice as an early-career, independent school psychologist;

(d) employ a systematic process that ensures that all students possess the knowledge and professional expertise to collaborate with families and school and community based professionals in designing, implementing, and evaluating interventions that effectively respond to the educational and mental health needs of children and youth; where the candidate must:

(i) demonstrate evidence of the ability to provide and evaluate the impact of direct and indirect intervention-based services for children and youth, families, and schools; and

(ii) provide evidence of services in the form of two performance-based products, one of which can be completed during practica and one product must have a primary focus on academic/cognitive skills and another with a primary focus on mental and behavioral health. Faculty must evaluate candidates' products;

(e) utilize systematic procedures to evaluate and improve the quality of the program. Different sources of process and performance information including, but not limited to, instructional evaluation, performance portfolios, field supervisor evaluations, and candidate/graduate performance on licensing/certification examinations are used, as appropriate, to evaluate and improve the program;

~~(e) limit the number of credit hours acquired through courses, seminars, and other learning experiences not open exclusively to graduate students to no more than one-third of the student's program;~~

(f) is comprehensive, sequential, and experiential, and it fosters the number of development credit hours acquired for candidates' professional identity as school psychologists, as reflected in the following:

(i) clear identification as a "school psychology program" and communication of a program framework or model, in which its philosophy/mission is represented in explicit goals and objectives for school psychology competencies that candidates are expected to attain;

(ii) an integrated, sequential program of study and supervised field experiences that are based on the program's philosophy/mission, goals, and objectives and are consistent across candidates;

(iii) full-time, part-time, or alternative types of enrollment that provide multiple and systematic opportunities through courses, seminars, coursework, supervised practices, and other comprehensive program activities for candidates to develop and encourage an affiliation with peers, faculty, and the profession;

(iv) multiple instructional delivery methods including, but not limited to, online, face to face, or hybrid may be utilized, the program documents that it provides supervision and evaluates candidate learning outcomes relevant to particular courses and field experiences not open exclusively to graduate students in a systematic manner;

(v) use of a systematic process to ensure that candidates demonstrate the student's knowledge and skills needed for effective school psychology service delivery; the ability to integrate competencies across NASP domains of school

psychology practice; and direct, measurable effects on children and youth, families, schools, and other consumers; and

(vi) use of data from multiple measures, including performance-based evaluation regarding candidates and program; graduates (including, but not limited to, employment, licensure/certification, satisfaction) to improve the quality of the program;

~~(f)~~ (g) exclude credit requirements for undergraduate study, study that is remedial, or study which is designed to remove deficiencies in meeting requirements for program admission; and

~~(g)~~ (h) include a full-time continuous residency or an alternate planned experience for all students and programs allowing alternate planned experiences as a substitute for full-time residency must demonstrate how those experiences are equivalent to experiences commonly associated with residency requirements.

(5) The provider ensures that specialist-level programs follow the standards described by ~~NASP~~ a national accrediting entity, and:

(a) through (c) remain the same.

(d) specialist level programs include a minimum of one academic year of supervised internship experience consisting of a minimum of 1200 clock hours, including a minimum of 600 hours in a school setting.

(6) through (6)(b) remain the same.

(c) the program includes a minimum of one academic year of doctoral supervised internship experience consisting of a minimum of 1500 clock hours, including a minimum of 600 hours in a school setting, as part of a doctoral program or prior specialist degree, or 600 hours of advanced practicum experience.

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

5. REASON: The Office of Public Instruction staff facilitated a comprehensive process to review and revise ARM Title 10, chapter 58 with involvement from Montana P-20 education stakeholders, including the Montana Council of Deans of Education, professional education organizations and associations, and content-specific professionals.

The proposed new and amended rules are necessary to provide clear guidance to Montana educator preparation providers regarding program requirements to prepare educator candidates to meet the teaching, learning, and leading expectations in Montana's P-12 accredited schools. National accrediting standards have been modified to reflect research-based practice and improvements in instructional strategies. Montana must incorporate necessary changes to ensure that our educator preparation providers will continue to be in compliance. Rules were amended for clarity, consistency, and currency. Content areas were updated to address evidence-based instructional practice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: McCall Flynn, Executive Director, Board of Public Education, 46 N.

Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59635; telephone (406) 444-0300; or e-mail bpe@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. McCall Flynn, Executive Director, Board of Public Education, has been designated to preside over and conduct this hearing.

8. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 above or may be made by completing a request form at any rules hearing held by the Board of Public Education.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the Board of Public Education has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ McCall Flynn
McCall Flynn
Rule Reviewer

/s/ Tammy Lacey
Tammy Lacey
Chair
Board of Public Education

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the Motor Carrier Services vehicles authorized to bypass weigh stations and the amendment of ARM 18.8.101 and 18.8.1301 pertaining to Motor Carrier Services definitions and compliance with weigh station bypass	)))))))	AMENDED NOTICE OF PROPOSED ADOPTION AND AMENDMENT AND EXTENSION OF COMMENT PERIOD NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 6, 2022, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. On June 10, 2022, the department published MAR Notice No. 18-189 pertaining to the proposed adoption and amendment of the above-stated rules at page 859 of the 2022 Montana Administrative Register, Issue Number 11. The department inadvertently failed to notify the appropriate interim committee concurrently with filing the proposal with the Secretary of State (2-4-302(2)(a), MCA) or send notice to interested persons within three days of publication (2-4-302(2)(b), MCA). The department has subsequently notified the appropriate interim committee and will send notice to interested persons within three days of publication. The department is extending the comment period in this notice, but the proposed adoption and amendments have not changed since the initial notice.

3. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on August 26, 2022, to advise us of the nature of the accommodation that you need. Please contact Russ Christoferson, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-9263; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail rchristoferson@mt.gov.

4. The rule proposed to be adopted provides as follows:

NEW RULE I VEHICLES AUTHORIZED TO BYPASS WEIGH STATIONS

(1) The requirements contained in 61-10-141, MCA, and ARM 18.8.1301 for vehicles stopping at stations do not apply to:

(a) vehicles being operated by carriers enrolled in electronic weigh station bypass programs. In-cab signals at equipped weigh station sites shall be followed, subject to jurisdictional bypass restrictions;

(b) vehicles receiving notification indicating a bypass from electronic signs on the mainline or through other means of communication;

(c) vehicles owned and operated by the Federal Government, a State, any subdivision of a State, or a Tribal Government;

(d) Montana based school buses operating to or from school, or a school sponsored activity;

(e) scheduled transit system buses travelling on a regular route;

(f) super-loads operating under a special permit which are unable to enter a weigh station due to size or safety concerns that have obtained prior authorization from the division administrator or designee.

(2) Vehicles meeting the following criteria may request weigh station bypass authorization from the division administrator or designee:

(a) empty vehicles making multiple trips, such as logging vehicles and harvesting support vehicles;

(b) vehicles operating to, from, or within a construction project; or

(c) other vehicles as determined on a case-by-case basis.

(3) Carriers with weigh station bypass authorization are subject to roadside enforcement stops.

(4) Authorized bypasses may be rescinded at the discretion of the department.

AUTH: 61-10-141, 61-10-155, MCA
IMP: 61-10-141, MCA

REASON: The 2021 Legislature enacted House Bill 77, Ch. 89, L. 2021, an act generally revising the laws related to motor carrier services that included among other revisions, expanding the types of vehicles that may bypass weigh stations. As amended by HB 77, 61-10-141, MCA, allows the department to exempt types of vehicles by rule. The proposed new rule is necessary to implement the bill and identify which vehicles may bypass an open weigh station. Proposed New Rule I will create efficiencies for the traveling public by allowing those vehicles which are prescreened, not regulated, or otherwise exempted to bypass open weigh stations.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>18.8.101 DEFINITIONS</u> The following definitions shall apply throughout this chapter.

(1) through (8) remain the same.

<u>(9) "Multiple trips" means travelling by a weighing location more than once on either a daily, weekly, or monthly basis as approved by the department.</u>

(9) through (12) remain the same but are renumbered (10) through (13).

<u>(14) "Regular route" means the scheduled transportation of passengers between designated points, over designated routes, and under time schedules that provide a regularity of service.</u>

(13) remains the same but is renumbered (15).

<u>(16) "School bus" has the definition set forth in 20-10-101, MCA.</u>

(14) through (16) remain the same but are renumbered (17) through (19).

AUTH: 61-3-710, 61-10-141, 61-10-155, MCA
IMP: 61-3-708, 61-3-709, 61-10-107, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-141, 61-10-201, MCA

REASON: The proposed amendment is necessary to include definitions for multiple trips and regular route for the purposes of implementing 61-10-141, MCA and New Rule I implementing that statute.

18.8.1301 COMPLIANCE WITH ~~WEIGHING LOCATION~~ WEIGH STATION SIGNS ~~- JURISDICTIONAL BYPASS RESTRICTIONS~~ (1) ~~Drivers of vehicles~~ Vehicles meeting the requirements of 61-10-141(1) and (3), MCA, are required to stop at all ~~weighing locations~~ weigh stations displaying an open sign unless authorized to bypass within [New Rule I].

(2) ~~Drivers operating vehicles for~~ Vehicles being operated by carriers enrolled in electronic weigh station bypass programs ~~may follow in cab signals at equipped weigh station sites which signals shall include whether the vehicle must stop,~~ are subject to jurisdictional bypass restrictions~~.~~

~~(3) Jurisdictional bypass restrictions require that~~ and regardless of receiving a bypass signal, ~~a driver~~ must enter an open ~~weighing location~~ weigh station when any of the following conditions apply:

(a) overweight ~~(including permitted loads)~~;

(b) ~~overwide~~ width exceeding ~~greater than ten~~ 10 feet ~~(including permitted loads)~~;

(c) ~~overheight greater than~~ height exceeding 15 feet 6 inches ~~(including permitted loads)~~;

(d) ~~overlength greater than~~ length exceeding ~~110~~ 120 feet ~~(including permitted loads)~~;

(e) oversize in excess of legal dimensions as outlined in 61-10-102, 61-10-103, and 61-10-104, MCA, without a valid permit.

~~(4)~~ (3) A violation of this rule is punishable as provided by law.

AUTH: 61-10-141, 61-10-155, MCA
IMP: 61-10-141, MCA

REASON: The proposed amendment to (1) is necessary because all the vehicles that may bypass scales will be identified in proposed New Rule I. The proposed amendments to (2) and (3) are necessary to make the rule easier to read and to make the rule internally consistent with other administrative rules.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Russ Christoferson, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-9263; or e-mail rchristoferson@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Russ Christoferson at the above address no later than 5:00 p.m., September 2, 2022.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 904 persons based on the currently active 9040 U.S. DOT accounts in Montana.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Department of Transportation website at www.mdt.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email and U.S. mail on February 17, 2022.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

13. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not have direct tribal implications.

/s/ Valerie A. Balukas
Valerie A. Balukas
Alternate Rule Reviewer

/s/ Malcolm "Mack" Long
Malcolm "Mack" Long
Director Department of Transportation

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.102, 23.16.103, 23.16.110, 23.16.502, 23.16.1716, 23.16.1826, 23.16.1913, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1916A, 23.16.1920, and 23.16.2001 pertaining to the Gambling Control Division headquarters address change	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Justice proposes to amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice, Gambling Control Division no later than 5:00 p.m. on September 2, 2022, to advise us of the nature of the accommodation that you need. Please contact Morgan Varty, Department of Justice, Gambling Control Division, 615 South 27th St., Suite A, Billings, Montana, 59101; telephone (406) 896-4300; fax (406) 896-4308; or e-mail gcd@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) through (3) remain the same.

(4) Forms 10 and FD-258 are available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming.

(5) remains the same.

AUTH: 23-5-112, 23-5-115, 23-5-621, MCA
IMP: 23-5-115, 23-5-118, 23-5-128, 23-5-129, 23-5-177, 23-5-178, 23-5-308, 23-5-324, 23-5-513, 23-5-625, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 10 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS TO BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER (1) and (2) remain the same.

(3) The department may require any noninstitutional lender to complete a document (Form 13) authorizing examination and release of information and (Form 10) a personal history statement on the lender, fingerprints on a form provided by the department, as well as any contract, statement, or other document from the lender deemed necessary to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. Forms ~~13,~~ 10, 13, and FD-258 are available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming.

AUTH: 23-5-115, MCA
IMP: 23-5-112, 23-5-115, 23-5-118, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 10, 13, and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.110 ASSOCIATED GAMBLING BUSINESS LICENSE (1) and (2) remain the same.

(a) an application using Form 17, with special instructions, and Form FD-258, which are available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming;

(b) through (5) remain the same.

AUTH: 23-5-112, 23-5-115, 23-5-178, MCA
IMP: 23-5-115, 23-5-178, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 17 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) Except as provided in (2) and (3), all applicants shall submit the following information on Forms 5, 10, 40, or 43, and FD-258, which are incorporated by reference and available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the division's web site www.dojmt.gov/gaming:

(a) through (4) remain the same.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-117, 23-5-118, 23-5-176, 23-5-177, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and to make Forms 5, 10, 40, 43, and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1716 SPORTS TAB GAME SELLER LICENSE (1) remains the same.

(a) a sports tab game seller license application. Form FD-258 is available upon request from ~~the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming;

(b) Form 10 as described in ARM 23.16.102, available upon request from ~~the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming;

(c) through (4) remain the same.

AUTH: 23-5-112, 23-5-115, MCA
IMP: 23-5-115, 23-5-502, 23-5-503, 23-5-513, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and to make Forms 10 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) and (1)(a) remain the same.

(i) The report must be delivered to the Gambling Control Division~~, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ 615 South 27th Street, Suite A, Billings, Montana 59101, or bear a United States postal service postmark not later than midnight of the 15th of the month following the quarters ending March 31, June 30, September 30, and December 31.

(ii) through (6) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-136, 23-5-610, 23-5-621, 23-5-637, MCA

REASON: This is specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and provide the current Gambling Control Division headquarters mailing address.

23.16.1913 USE OF TEMPORARY REPLACEMENT OR LOANER MACHINES – PERMIT REQUIRED – REPORTING (1) remains the same.

(2) Any operator placing a temporary replacement machine in service must notify the department on a form prescribed by the department. An application to place a temporary replacement machine in service is incorporated by reference as

Form 7 and is available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control office location, or on the department's web site www.dojmt.gov/gaming.

(3) through (6) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-115, 23-5-603, 23-5-611, 23-5-612, MCA

REASON: This is specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Form 7 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1914 DISTRIBUTOR'S LICENSE (1) remains the same.

(a) a distributor's license application, Forms 17 and FD-258 are available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control office location, or on the department's web site www.dojmt.gov/gaming;

(b) through (3) remain the same.

AUTH: 23-5-112, 23-5-115, MCA
IMP: 23-5-115, 23-5-128, 23-5-176, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 17 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1915 ROUTE OPERATOR'S LICENSE (1) remains the same.

(a) a route operator license application, Forms 17 and FD-258 are available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming;

(b) through (3) remain the same.

AUTH: 23-5-112, 23-5-115, MCA
IMP: 23-5-115, 23-5-129, 23-5-176, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 17 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1916 MANUFACTURER'S LICENSE (1) remains the same.

(a) a manufacturer's license application, Forms 17 and FD-258 are available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena,~~

~~MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming;

(b) through (3) remain the same.

AUTH: 23-5-112, 23-5-115, MCA
IMP: 23-5-115, 23-5-176, 23-5-625, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 17 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1916A ACCOUNTING SYSTEM VENDOR LICENSE (1) remains the same.

(a) Form 17, with special accounting system vendor instructions, and Form FD-258, available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming;

(b) through (3) remain the same.

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AUTH: 23-5-112, 23-5-115, 23-5-178, 23-5-621, MCA
IMP: 23-5-115, 23-5-178, 23-5-637, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Forms 17 and FD-258 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

23.16.1920 EPRS, AARS, CTVS, AND VGM HARDWARE AND SOFTWARE SPECIFICATIONS (1) and (1)(a) remain the same.

(b) The required minimum implementation of the IGT SAS protocol is defined in the Montana SAS Serial Protocol Implementation Guide. The guide is available on the Montana Department of Justice, Gambling Control Division web site (www.dojmt.gov/gaming) and is available by request from the Gambling Control Division, Technical Services Section, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424; (406) 444-~~1971~~9152.

(2) and (3) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-603, 23-5-621, 23-5-631, 23-5-637, MCA

REASON: This specific rule change is necessary to remove and correct the previous phone number which no longer corresponds to the Gambling Control Division, Technical Services Section.

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) remains the same.

(a) a manufacturer license application, Form 17 is available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control office location, or on the department's web site www.dojmt.gov/gaming;

(b) through (8) remain the same.

(9) Form 22 is available ~~from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424~~ at any Gambling Control Division office location, or on the department's web site www.dojmt.gov/gaming.

AUTH: 23-5-112, 23-5-115, 23-5-152, 23-5-621, MCA
IMP: 23-5-115, 23-5-152, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

REASON: This specific rule change is necessary to remove the previous Gambling Control Division headquarters mailing address and make Form 17 available at any Gambling Control Division office location in the state instead of limiting the form's availability to one location or by mail-in request.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Morgan Varty, Department of Justice, Gambling Control Division, 615 South 27th Street, Suite A, Billings, Montana, 59101; telephone (406) 896-4300; fax (406) 896-4308; or e-mail gcd@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Morgan Varty at the above address no later than 5:00 p.m., September 2, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be zero persons based on there being no substantive persons directly affected.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person listed above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, are not applicable to this proposed rulemaking.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Derek Oestreicher
Derek Oestreicher
Rule Reviewer

/s/ David Dewhirst
David Dewhirst
Solicitor General
Montana Department of Justice

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.24.504 pertaining to transfer of quota and 32.24.505 pertaining to reassignment of quota from the unassigned quota pool and readjustment of quota into the statewide quota system	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Board of Milk Control (board), which is administratively attached to the Department of Livestock, proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 29, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts, Room 308, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; TDD number 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

32.24.504 TRANSFER OF QUOTA (1) Quota is the property of each eligible producer. It may be transferred pursuant to the following terms and conditions:

(a) Quota transfers must be a minimum of 100 pounds a day. If the eligible producer is going out-of-business and has a daily quota balance amount that is less than 100 pounds, then that amount may be transferred.

(b) Any time quota is transferred there is a forfeited 10% reduction.

~~(b)~~ (c) The bureau must be notified in writing by the proposed quota transfer or at least seven days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred. The producer must also notify the producer's pool plant of the transfer. The bureau will notify the producer committee of any proposed transfers.

~~(c)~~ (d) All quota transfers are effective only upon approval by the producer committee. The proposed quota transfer must be bona fide and not for the purpose of evading any provisions of applicable law.

~~(d)~~ (e) A quota transfer may be made only to an eligible producer.

~~(e)~~ (f) Leasing of quota is prohibited.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

32.24.505 ~~REASSIGNMENT OF QUOTA FROM THE UNASSIGNED QUOTA POOL AND~~ READJUSTMENT OF QUOTA INTO THE STATEWIDE QUOTA SYSTEM ~~(1) The quota accumulated in the unassigned quota pool will be re-assigned pro-rata to all eligible producers and new eligible producers when the unassigned quota pool is equal to or greater than 500 pounds.~~

~~(a) For application of (1) the bureau determines the total pounds of quota that has been forfeited and accumulated through March 31 of each year.~~

~~(b) The resulting pounds in (1)(a) are prorated to all eligible producers and new eligible producers on the basis of these producers' average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1.~~

~~(2)~~ (1) Readjustment of quota into the statewide quota system will occur if the Montana market needs exceed the current established total quota.

~~(3)~~ (2) Market needs are not met when the following conditions exist:

(a) when greater than 83.5% of quota milk received is utilized in non-surplus Class I and II usage; and

(b) when utilization of quota milk for non-surplus Class I and Class II usage has increased from two years prior to the preceding year. When a negative figure results, there will be no readjustment.

~~(4)~~ (3) When the statewide quota system needs additional quota added to meet market needs, the bureau must calculate on or before the first day of April each year the additional quota to be assigned to each eligible producer and new eligible producer in accordance with the following computations:

(a) For application of ~~(3)(a)~~(2)(a), using the preceding calendar year (January 1 through December 31), the total non-surplus Class I and Class II usage is divided by the total quota pounds to determine the percentage of quota milk utilized in non-surplus Class I and II usage.

(b) For application of ~~(3)(b)~~(2)(b), using the preceding calendar year (January 1 through December 31), compute the total pounds of non-surplus Class I and Class II usage from all pool plants and subtract the total pounds of non-surplus Class I and II usage in the calendar year prior to the preceding calendar year.

(c) If the percentage in ~~(4)(a)~~(3)(a) exceeds 83.5%, take the positive figure resulting from the computation in ~~(4)(b)~~(3)(b) and divide it by the total days in the year to determine how many pounds of quota will be issued into the statewide quota system.

(d) The resulting pounds in ~~(4)(c)~~(3)(c) must be prorated to all eligible producers and new eligible producers on the basis of their average daily marketing of milk to all pool plants during the preceding months of September through December and assigned to them as quota effective on May 1.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The board proposes to amend these two rules as part of the milk industry's collective response to performance audit of milk market regulation which found the current amount of quota in the state is too high. The board, in collaboration with milk producers, agreed to re-establish a 10% reduction on quota transfers and implement the forfeiture of unassigned quota. This change will have no immediate financial impact on current producers and, over time, should increase the value of their quota remaining in the system.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, to be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the same address as in 4 above. The written request for hearing must be received no later than 5:00 p.m., August 29, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four persons based on there being 39 current milk pool producers in the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the address in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer
Department of Livestock

/s/ Ken Bryan
Ken Bryan
Chair
Board of Milk Control

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.24.480 pertaining to producer pricing rules	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Board of Milk Control (board), administratively attached to the Department of Livestock, proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 29, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.24.480 PRODUCER PRICING RULES (1) through (3) remain the same.

(4) Prices paid producers for Class III milk will be based on the following price formulas for skim milk and butterfat.

(a) Class III Skim Milk Price Formula. The price of the skim milk utilized in Class III will be the lower of the Advanced Class III Skim Milk Pricing Factor or the Advanced Class IV Skim Milk Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication, converted to units of dollars per pound of skim milk.

(b) Class III Butterfat Price Formula. The price of butterfat utilized in Class III will be the Advanced Butterfat Pricing Factor published in the United States Department of Agriculture Announcement of Advanced Prices and Pricing Factors or its successor publication less the Montana Class III Butterfat Price Differential of $0.10 per pound of butterfat and in units of dollars per pound of butterfat.

~~(i) Class III Montana Butterfat Price Differential. The Montana Class III Butterfat Price Differential is:~~

~~(A) $0.20 per pound of butterfat for Class III butterfat utilized before January 1, 2019;~~

~~(B) $0.15 per pound of butterfat for Class III butterfat utilized from January 1, 2019 through June 30, 2019;~~

~~(C) $0.10 per pound of butterfat for Class III butterfat utilized after June 30, 2019.~~

(5) through (7) remain the same.

AUTH: 81-23-104, 81-23-302, MCA
IMP: 81-23-102, 81-23-302, MCA

REASON: As part of the Board of Milk Control's participation in the Governor's red tape relief initiative, this change removes outdated language from the current rule. There is no financial or other impact as a result of this change. It was the consensus of industry stakeholders and all board members to endorse this change.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, to be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 4 above. The written request for hearing must be received no later than 5:00 p.m., August 29, 2022.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four persons based on there being 39 current milk pool producers in the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the address in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer
Department of Livestock

/s/ Ken Bryan
Ken Bryan
Chair
Board of Milk Control

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.435 pertaining to testing within the DSA	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 29, 2022, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.3.435 TESTING WITHIN THE DSA (1) ~~The following official brucellosis test requirements apply to all test eligible animals and c~~Cattle or domestic bison ~~of any age if intended to be used for breeding purposes that are or have been~~ located within the DSA ~~boundaries of any calendar year~~ must have an official brucellosis test within 30 days prior to leaving the DSA or changing ownership, except:

(a) ~~A test within 30 days prior to movement out of the DSA or change of ownership, unless that movement is to an approved Montana livestock market~~ Steers or spayed heifers.

(b) Sexually intact animals less than 12 months of age for feeding.

(c) Animals moving to an approved Montana livestock market that will be tested at the market prior to sale.

(d) Animals destined for exhibition or veterinary care within the DSA that will not be commingled with other livestock, will remain in confinement for the duration of the event/treatment, and will depart within 10 days of arrival.

(e) Animals utilizing the DSA during the low-risk period (entering the DSA after July 15 and leaving prior to February 15).

(2) ~~A test completed July 16 or after is acceptable for movement out of the DSA or change of ownership through February 15 of the following year.~~ Animals entering the DSA for summer grazing may be tested upon return to their origin location. Testing must be done within 10 days and animals may not be commingled with other livestock until testing is complete.

(3) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on a brucellosis ~~prevention and surveillance~~ herd management agreement.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, ~~81-2-105, 81-2-110,~~ 81-2-111, MCA

REASON: Since the inception of the Designated Surveillance Area (DSA) in 2010, herd management agreements (MA) have been used to assess risk, collect demographic information, and grant variances. Current Administrative Rules of Montana (ARM) require an MA before any variances or rule exceptions can be granted. Twelve years later, the DSA comprises close to 450 producers, nearly three times more than in 2010. Detailed, individual MAs and documented variances are no longer an effective method of meeting producer or program needs. The department is proposing the most frequently granted variances be included in ARM as standard exemptions to streamline the process for DSA producers and department staff.

Citations to authority were amended to accurately reflect the full statutory authority of the board to promulgate rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Officer at the address in 4 above no later than 5:00 p.m., August 29, 2022

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 45 persons based on approximately 450 identified DSA producers.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact address in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ *Darcy Alm*
Darcy Alm
Rule Reviewer

/s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII and the repeal of ARM 37.34.1901, 37.34.1903, 37.34.1905, 37.34.1907, 37.34.1909, 37.34.1911, 37.34.1913, 37.34.1915, 37.34.1917, 37.34.1919, 37.34.1921, 37.34.1923, 37.34.1925, 37.34.1927, 37.34.1929, 37.34.1931, 37.34.1933, 37.34.1935, 37.34.1937, 37.34.1939, 37.34.1941, 37.34.1943, 37.34.1945, 37.34.1947, 37.34.1949, 37.34.1951, 37.34.1953, 37.34.1955, 37.34.1957, 37.34.1959, 37.34.1961, 37.34.1963, and 37.34.1965 pertaining to applied behavior analysis services	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 26, 2022, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/86785903743?pwd=aDF3TnlCbmFHdXhXdC9ic05IeVZWUT09, Meeting ID: 867 8590 3743, Password: 475171; or

(b) Dial by telephone: +1 646 558 8656, Meeting ID: 867 8590 3743, Password: 475171. Find your local number: https://mt-gov.zoom.us/u/kfQuprzhf.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 12, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The definitions applicable to Applied Behavior Analysis (ABA) therapy services are as follows:

(1) "Applied Behavior Analysis" (ABA) means a type of therapy that applies human behavior principles to improve a member's adaptive functioning and reduce problem behaviors due to a psychiatric and/or behavioral condition.

(2) "Autism spectrum disorder" (ASD) means a condition as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) of the American Psychiatric Association. The DSM-5 ASD definition is adopted and incorporated by reference. The DSM-5 defines and classifies mental disorders. A copy is available for public inspection at: Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, Helena, MT 59604-4210. A copy may be purchased online at https://dsm.psychiatryonline.org/doi/book/10.1176/appi.books.9780890425787.

(3) "Behavior identification assessment" (BIA) means a developmentally appropriate assessment that identifies strengths and weaknesses across domains and potential barriers to progress. Areas of assessment may include challenging behaviors and skill deficits, co-occurring medical and psychiatric conditions, cognitive, adaptive, and developmental functioning, and family dynamics.

(4) "Board Certified Behavior Analyst®" (BCBA) means an individual with a graduate-level certification in behavior analysis who has been certified by the Behavior Analyst Certification Board (BACB). Professionals certified at the BCBA level are independent practitioners who provide ABA services.

(5) "Board Certified Behavior Analyst-Doctoral®" (BCBA-D) means a Board Certified Behavior Analyst who has earned their PhD, in addition to their Master's and/or Bachelor's degrees, and had been certified by the BACB. Any reference to a BCBA in these rules includes BCBA-Ds, unless indicated otherwise.

(6) "Board Certified Assistant Behavior Analyst®" (BCaBA) means an individual with an undergraduate level certification in behavior analysis who has been certified by the BACB. Professionals certified at the BCaBA level provide behavior analysis services under the supervision of a BCBA.

(7) "DD eligible" means a member found eligible for the receipt of state-sponsored developmental disabilities services pursuant to ARM 37.34.201.

(8) "Department" means the Montana Department of Public Health and Human Services.

(9) "Developmental disability" (DD) means a condition or disability that meets the definition of "developmental disability" set forth in 53-20-202(3), MCA.

(10) "Diagnostic evaluation" means an evaluation performed by a qualified health care professional with expertise in the diagnostic area, that establishes the qualifying diagnosis.

(11) "Eligibility criteria" means those criteria established for the purposes of the program of ABA services authorized by the department, as specified in the Montana Medicaid Applied Behavior Analysis Services Manual (ABA Services manual), dated July 26, 2022. The department adopts and incorporates by reference the ABA Services manual which provides the public with greater detail about ABA services. Any conflict between these rules and what is outlined in the ABA Services manual should be resolved in favor of what is written in these rules. A copy may be accessed on the DPHHS website at the following link: https://medicaidprovider.mt.gov/manuals/appliedbehavioranalysisservicesmanual or

a paper copy may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at https://medicaidprovider.mt.gov/76.

(12) "Functional impairment criteria" are defined in the ABA Services manual.

(13) "Member" means a person enrolled in Montana Medicaid who is eligible to receive ABA services.

(14) "Provisional qualifying diagnosis" means a member's diagnosis that qualifies the member for initiation of ABA services but that has not yet been confirmed by a qualified health care professional with expertise in the diagnostic area. The diagnosis must meet functional impairment criteria and be:

(a) SED;

(b) ASD; or

(c) DD eligible.

(15) "Qualified health care professional with expertise in the diagnostic area," for the purpose of Montana Medicaid ABA therapy services, refers to one of the following:

(a) child and adolescent psychiatrist;

(b) general psychiatrist with child and adolescent experience;

(c) psychiatric mental health nurse practitioner with child and adolescent experience;

(d) developmental pediatrician; or

(e) neuropsychologist or psychologist.

(16) "Qualifying diagnosis" means a member's diagnosis that is established by a qualified health care professional with expertise in the diagnostic area through a diagnostic evaluation. The diagnosis must meet functional impairment criteria and the diagnosis must be:

(a) SED;

(b) ASD; or

(c) DD eligible.

(17) "Registered behavior technician" (RBT) means an individual with a paraprofessional certification by the BACB in behavior analysis. The RBT assists in delivering behavior analysis services and practices under the direction and close supervision of a BCBA. The supervising BCBA is responsible for all work the RBT performs.

(18) "Serious emotional disturbance" (SED), for the purposes of the program of ABA services authorized by the department, is a mental disorder as defined in the Clinical Guidelines chapter of the ABA Services manual.

(19) "Treatment plan" means an individualized written document that has been developed from the BIA and contains all the critical features listed in the Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers Second Edition (ABA Treatment of ASD: Practice Guidelines) issued by the Behavior Analyst Certification Board, Inc.® (BACB) and/or Council of Autism Service Providers. The department adopts and incorporates by reference the ABA Treatment of ASD: Practice Guidelines, which provides guidelines and other information about ABA treatment for ASD. A copy is

available for public inspection at the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, located at 111 N. Sanders, Helena, MT 59604-4210 and is available online at https://casproviders.org/wp-content/uploads/2020/03/ABA-ASD-Practice-Guidelines.pdf.

(20) "Unit of service" means 15 minutes of treatment service.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, MCA

NEW RULE II INITIAL ELIGIBILITY (1) For a member to qualify for initial ABA services, the member must meet the functional impairment criteria and must:

(a) have a provisional qualifying diagnosis of ASD and be under 21 years of age;

(b) be DD eligible and under 21 years of age; or

(c) have a provisional qualifying diagnosis of SED and be either:

(i) 17 years of age or younger; or

(ii) up to 20 years of age and enrolled in an accredited secondary school.

(2) A physician, licensed mental health professional, nurse practitioner, or psychologist must deem ABA services medically necessary to alleviate the symptoms of the stated provisional qualifying diagnosis and must document the medical necessity of the service in the form of a prescription. The prescription must state the diagnosis for which the member is being referred and that the referral is for ABA services.

(3) The BCBA must complete, and submit to the department, the ABA Services Intent to Initiate Treatment form.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-111, MCA

NEW RULE III CONTINUED ELIGIBILITY FOR ADDITIONAL UNITS OF SERVICE (1) For a member to continue receiving ABA services after the initial 180 calendar days or the initial authorized units of service are exhausted, they must meet all criteria for continued eligibility and for additional units of service, and the department must authorize such additional units of service. The criteria for continued eligibility and additional units of service, as well as the process and rules governing authorization of additional units of service are set forth below and in the ABA Services manual.

(2) For a member to meet all criteria for continued eligibility:

(a) The member must continue to meet the age criteria for initial eligibility in [NEW RULE II];

(b) The member's original provisional diagnosis must then be confirmed as a qualifying diagnosis through a diagnostic evaluation, performed by one of the qualified healthcare professionals with expertise in the diagnostic area;

(c) The member must continue to meet functional impairment criteria that is supported in documentation the BCBA submits to the department;

(d) The department must deem the member eligible through its authorization process; and

(e) Both the BCBA and the referring physician, nurse practitioner, licensed mental health professional, or psychologist must deem the services medically necessary.

(3) For a member to meet the criteria for additional units of service:

(a) The member must continue to meet the eligibility criteria outlined above, the service requirements in [NEW RULE IV], and:

(i) the BCBA providing services must have a reasonable expectation that the member will continue to benefit from the services and that the skill deficits and behaviors identified in the treatment plan will improve to a clinically meaningful extent;

(ii) the treatment plan must demonstrate progress in each of the identified goals or provide a clinical explanation and modification to address a lack of progress; and

(iii) the treatment plan demonstrates that the member is not experiencing a worsening of skill deficits or behaviors due to the treatment services.

(b) The member must be excluded from eligibility for service if any of the following criteria occur:

(i) The member demonstrates consistent worsening of skill deficits and/or behaviors with the service being delivered;

(ii) The member's parent/guardian is not engaged in treatment and/or does not agree to continued service delivery;

(iii) The member has medical conditions or impairments that would prevent beneficial utilization of services;

(iv) The member has demonstrated no significant progress in treatment goals for two consecutive additional units of service request reviews, and the BCBA provider cannot sufficiently explain the lack of progress to justify continuing to authorize the service; or

(v) The member can be safely and effectively treated at a less intensive level of service or care.

(4) The BCBA must receive authorization from the department for additional units of services before such units of service can be provided.

(5) For the department to authorize additional units of service:

(a) The BCBA must complete and submit the ABA Services Additional Units of Service Request form and additional required documentation at least 14 calendar days prior to the intended onset of continued service delivery. Additional required documentation is specified in the ABA Services manual; and

(b) The member must continue to have a qualifying diagnosis that meets the criteria of (2)(b).

(6) The processes for a service provider to request additional units of service and for the department's review and authorization are outlined in the ABA Services manual's Authorization of Additional Units of Service section.

(7) If a previous request is denied, a service provider may submit a request for additional units of service if they have additional information to satisfy any deficiencies noted with respect to such denied request. This is considered a new

submission and all required documents will need to be submitted again for a new department review and determination.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-111, 53-21-701, 53-21-702, MCA

NEW RULE IV SERVICE REQUIREMENTS (1) Services are covered only when within the scope of the provider's license. All providers must comply with all applicable state and federal statutes, rules, and regulations.

(2) Individuals receiving ABA services must meet the department's applicable initial and/or continuing eligibility criteria. The services delivered must meet all the following service requirements:

(a) The services must be approved by utilizing the processes, including the authorization process, outlined in the ABA Services manual. The ABA provider must satisfy the service requirements listed here and in the ABA Services manual.

(b) The services must be directed by a BCBA or BCBA-D. Some services may be provided by a BCaBA or an RBT if the BCaBA or RBT meets the qualifications of [NEW RULE VI] and is supervised by the BCBA in accordance with ARM 24.189.910.

(c) The services delivered must be consistent with the following elements as outlined in the ABA Treatment of ASD Practice Guidelines:

(i) ABA core characteristics;

(ii) Essential practice elements; and

(iii) Assessment, formulation of treatment goals, and measurement of client progress.

(d) Services are delivered in compliance with the member's individualized treatment plan, developed within 30 calendar days of onset of services, and containing all the critical features listed in the ABA Treatment of ASD Practice Guidelines.

(e) Services must be provided or supervised by the BCBA, BCBA-D, or BCaBA who wrote the treatment plan.

(f) Services must be provided to the member in person, with the provider and the member in the same physical location, unless specifically authorized in writing by the department.

(3) ABA services may continue so long as the member does not meet any of the service exclusion criteria set forth in [NEW RULE III(3)(b)].

(4) In addition to the requirements outlined in this rule, the ABA Services manual sets forth requirements, request and review processes, and procedures for ABA services with which an ABA provider must comply.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 37-17-403, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-21-701, 53-21-702, MCA

NEW RULE V CONCURRENT SERVICES (1) The following Montana Medicaid Children's Mental Health Bureau (CMHB) services may be provided

concurrently with ABA services if ABA services are provided and billed outside the authorized treatment hours of the other programs, and if providers demonstrate and document attempts made for coordination with community-based services:

(a) partial hospital services (PHP);

(b) day treatment (Day TX);

(c) comprehensive school and community treatment (CSCT);

(d) therapeutic group home (TGH);

(e) home support services (HSS);

(f) therapeutic foster care (TFC);

(g) extraordinary needs aide (ENA); and/or

(h) targeted case management (TCM) for youth with SED.

(2) The following Montana Medicaid CMHB services may not be provided concurrently with ABA services, as they are considered duplicative:

(a) community-based psychiatric rehabilitation and support services (CBPRS);

(b) psychiatric residential treatment facility (PRTF);

(c) acute inpatient hospital services; and/or

(d) intensive outpatient services (IOP).

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-21-701, 53-21-702, MCA

NEW RULE VI PROVIDER REQUIREMENTS (1) A BCBA/BCBA-D must:

(a) comply with, and agree to be bound by, all laws, rules, regulations, and policies generally applicable to Medicaid providers including the provisions of ARM 37.85.401, 37.85.402, 37.85.406, 37.85.407, 37.85.410, 37.85.414, and 37.85.415;

(b) be licensed and have met the licensure requirements for the State of Montana located in ARM 24.189.901;

(c) follow all supervision requirements of ARM 24.189.910; and

(d) maintain responsibility for billing for BCaBA's and RBT's services and assuring that the services are delivered in accordance with the member's Treatment Plan.

(2) A BCaBA must:

(a) be licensed and have met the licensure requirements for the State of Montana found in ARM 24.189.907; and

(b) work under the oversight of a BCBA who assumes full professional responsibility for the services delivered and billed.

(3) An RBT must work under the oversight of a BCBA who bills and assumes full responsibility for services delivered.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-21-701, 53-21-702, MCA

NEW RULE VII PROVIDER REIMBURSEMENT (1) The department will pay providers of ABA services the lesser of:

(a) the provider's actual submitted charge for services; or

(b) the rate established in the department's Medicaid fee schedule, as adopted in ARM 37.85.106.

(2) Claims must be submitted by, or on behalf of, a BCBA licensed by the State of Montana and enrolled as a Montana Medicaid provider.

(3) The provider may not:

(a) utilize Current Procedural Terminology (CPT) codes not approved by the department; or

(b) exceed the authorized units of service in an authorized 180 calendar day timespan.

(4) The department may review the medical necessity of services or items at any time, either before or after payment, in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary, or otherwise not in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

(5) The department may not authorize provider's reimbursement retroactively for failure to submit timely, complete, and required documentation.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-21-701, 53-21-702, MCA

NEW RULE VIII HEARING RIGHTS (1) Providers who are aggrieved by an adverse department action under these rules may request a hearing to the extent provided, and according to the procedures specified, in ARM 37.85.411.

AUTH: 2-4-201, 53-6-113, 53-21-703, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The department proposes to repeal the following rules:

37.34.1901 MEDICAID HOME AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: AUTHORITY

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1903 MEDICAID HOME AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: GENERALLY

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1905 MEDICAID HOME AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: ELIGIBILITY

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

37.34.1907 MEDICAID HOME AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: SCREENING AND ACCEPTANCE DETERMINATIONS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1909 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: TRANSITIONING FROM THE CHILDREN'S AUTISM WAIVER

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1911 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: REIMBURSEMENT

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1913 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: AVAILABLE SERVICES

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1915 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: GENERAL PROVIDER REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1917 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INDIVIDUAL FAMILY SERVICE PLAN

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1919 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: NOTICES AND FAIR HEARINGS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1921 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INFORMING BENEFICIARY OF CHOICE

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1923 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: CHILDREN'S AUTISM TRAINING, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1925 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: CHILDREN'S AUTISM TRAINING, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1927 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: WAIVER-FUNDED CHILDREN'S CASE MANAGEMENT

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1929 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: WAIVER-FUNDED CHILDREN'S CASE MANAGEMENT, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1931 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: RESPITE, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1933 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: RESPITE, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1935 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: ENVIRONMENTAL MODIFICATION, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1937 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: ENVIRONMENTAL MODIFICATION, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1939 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: ADAPTIVE EQUIPMENT, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1941 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: ADAPTIVE EQUIPMENT, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1943 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: OCCUPATIONAL THERAPY, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1945 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: OCCUPATIONAL THERAPY, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1947 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PHYSICAL THERAPY, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1949 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PHYSICAL THERAPY, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1951 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: SPEECH THERAPY, DEFINITION

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

37.34.1953 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: SPEECH THERAPY, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1955 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: TRANSPORTATION, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1957 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: TRANSPORTATION, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1959 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INDIVIDUAL GOODS AND SERVICES, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1961 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: INDIVIDUAL GOODS AND SERVICES, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1963 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PROGRAM DESIGN AND MONITORING, DEFINITION

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

37.34.1965 MEDICAID AND COMMUNITY SERVICES CHILDREN'S AUTISM PROGRAM 0667: PROGRAM DESIGN AND MONITORING, REQUIREMENTS

AUTH: 53-6-402, MCA
IMP: 53-6-402, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through VIII to govern the Applied Behavior Analysis (ABA) Services Medicaid State Plan.

The purpose of the proposed new rules is to establish, in accordance with federal requirements and the intent of the 2017 Montana Legislature in Senate Bill 199, a Medicaid state program to provide appropriate services to youth who have not reached age 21 who have a diagnosis of autism, to individuals with other serious emotional disturbance (SED) diagnoses, and to DD eligible members that meet functional impairment criteria.

NEW RULE I DEFINITIONS

New Rule I sets forth the definitions for the terms that are used in the context of the program. The proposed rule adopts, and incorporates by reference, a portion of the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition, the Montana Medicaid Applied Behavior Analysis Services Manual (ABA Services manual), and the Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers Second Edition (ABA Treatment of ASD: Practice Guidelines). The proposed adoption of definitions in rule is necessary to ensure that the services to be provided and the forms and processes for service delivery are consistent and well-understood by providers, members, and state staff. The proposed adoption and incorporation by reference of these materials is necessary to provide the public with additional clarification about relevant mental disorders, program requirements, and guidelines and information about ABA treatment for individuals with autism.

NEW RULE II INITIAL ELIGIBILITY

New Rule II establishes the criteria and process for the Medicaid provider to determine initial eligibility to receive services through the ABA services program for a youth receiving Medicaid. The proposed rule dictates that the initial services may be provided to members with a provisional qualifying diagnosis of autism spectrum disorder (ASD) or SED, or have been determined to be DD eligible. The member must also meet the specified functional impairment criteria. The criteria creates consistency for population types across various service programs, but ABA services may be available to individuals as an early and periodic screening, diagnostic, and treatment (EPSDT)-covered service if not covered directly under this rule. A physician, licensed mental health professional, or other qualified health care professional must deem ABA services medically necessary. The proposed rule would require that the medical necessity and the provisional qualifying diagnosis are documented in the form of a prescription. The BCBA will complete and submit the required documentation. No other advanced authorization is needed with respect to the authorized service units if the member meets the eligibility criteria as well as all criteria, processes, and procedures in the ABA Services manual. The proposed rule is necessary to identify who is eligible for initial service units.

NEW RULE III CONTINUED ELIGIBILITY FOR ADDITIONAL UNITS OF SERVICE

New Rule III establishes the criteria and process for the Medicaid provider to determine a Medicaid member's continued eligibility to receive additional units of services available through the ABA services program. Continued service units are requested by a BCBA by submitting both a qualifying diagnosis established by a qualified health care professional with expertise in the diagnostic area, and functional impairment criteria must continue to be met and supported in documentation. The proposed rule states that a member must meet Medicaid initial eligibility criteria and all criteria for continued eligibility. The member must not be excluded from eligibility for service through any of the listed criteria in the proposed rule. The rule proposes that the required documentation must be completed and submitted within the defined timeframe. It is necessary to adopt this proposed rule to identify who has continued eligibility for additional service units, the process to request such additional service units, and to establish the medical necessity criteria required for the continuation of ABA services.

NEW RULE IV SERVICE REQUIREMENTS

New Rule IV proposes the specific requirements that a Montana Medicaid provider must follow for appropriate billing of ABA services, the criteria for the receipt of authorization of continued authorized units of service, and requirements that ensure the program services a member receives are medically necessary. It is necessary to adopt this proposed rule to define the program parameters; doing so will effectively serve participants and aid the program's fiscal responsibility for Medicaid funds.

NEW RULE V CONCURRENT SERVICES

New Rule V establishes the specific services that may not be provided concurrently with ABA services. This rule would also outline the services that may be provided concurrently with ABA services, provided that there is demonstrated and documented attempts to coordinate with the other community-based services. The proposed rule is necessary to add language which precludes the member from receiving certain other Medicaid-funded Children's Mental Health Bureau services that would be duplicative of the services being delivered through the Medicaid-funded ABA services program.

NEW RULE VI PROVIDER REQUIREMENTS

New Rule VI establishes the various criteria that qualify a person to provide the Medicaid ABA services. Those who would qualify include a BCBA, a BCaBA, and a RBT. The proposed provider requirements are necessary to ensure that participating members receive services from qualified providers.

NEW RULE VII PROVIDER REIMBURSEMENT

New Rule VII establishes both the various criteria by which a provider is reimbursed for services and how the department determines the provider's reimbursement rate pursuant to ARM 37.85.106. It also gives notice of the department's medical necessity review pursuant to ARM 37.85.410. This proposed rule is necessary to establish provider requirements and department responsibilities for reimbursement of services.

NEW RULE VIII HEARING RIGHTS

New Rule VIII gives notice of the department's appeal process pursuant to ARM 37.85.411. This rule is necessary to inform the public of their hearing rights and the process to appeal a department decision.

The department is also proposing to repeal ARM 37.34.1901, 37.34.1903, 37.34.1905, 37.34.1907, 37.34.1909, 37.34.1911, 37.34.1913, 37.34.1915, 37.34.1917, 37.34.1919, 37.34.1921, 37.34.1923, 37.34.1925, 37.34.1927, 37.34.1929, 37.34.1931, 37.34.1933, 37.34.1935, 37.34.1937, 37.34.1939, 37.34.1941, 37.34.1943, 37.34.1945, 37.34.1947, 37.34.1949, 37.34.1951, 37.34.1953, 37.34.1955, 37.34.1957, 37.34.1959, 37.34.1961, 37.34.1963, and 37.34.1965, pertaining to children's autism waiver. These rules are for a waiver service that is no longer available and are unrelated to the new proposed rules pertaining to ABA services.

Fiscal Impact

The proposed new rules allow additional ABA services and expand program eligibility for the ABA program. The programmatic changes are projected to increase Medicaid provider enrollment while increasing the number of clients receiving ABA services by 130 clients over the biennium. With the ABA programmatic changes, an estimated total of 433 clients would receive ABA services over the biennium. The additional allowable ABA services will positively impact most clients receiving ABA services. Changes to the ABA program are anticipated to increase Medicaid expenditures by $585,000, or 67%, in state fiscal year 2022, and $1.1 million, or 113%, in state fiscal year 2023.

6. The department intends to apply these rule adoptions and repeals retroactively to August 1, 2021. A retroactive application of the proposed rule adoptions and repeals does not result in a negative impact to any affected party.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do apply and the sponsor was contacted by phone and by email on July 15, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, to determine whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ ALEEA SHARP
Aleea Sharp
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.114.101, 37.114.105, 37.114.201, 37.114.203, 37.114.204, 37.114.314, 37.114.315, 37.114.501, 37.114.512, 37.114.515, 37.114.530, 37.114.531, 37.114.552, and 37.114.583 and the repeal of 37.114.586 pertaining to communicable disease control	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 25, 2022, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84077716165?pwd=L0dKOERXcHJvK2xKb21IdlJjSXloQT09, Meeting ID: 840 7771 6165, and Password: 705919; or

(b) Dial by telephone: +1 646 558 8656, Meeting ID: 840 7771 6165, and Password: 705919.

Find your local number: https://mt-gov.zoom.us/u/kvVCivfTe.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.114.101 DEFINITIONS In addition to the definitions contained in 50-1-101, MCA, ~~Unless~~ unless otherwise indicated, the following definitions apply throughout this chapter:

(1) remains the same.

~~(2) "Communicable disease" means an illness due or suspected to be due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host, directly or indirectly~~.

(3) and (4) remain the same but are renumbered (2) and (3).

~~(5)~~(4) "Control of Communicable Diseases Manual" means the ~~"Control of Communicable Diseases Manual, An Official Report of the American Public Health Association," 20th edition, 2015~~ publication adopted and incorporated by reference in ARM 37.114.105(1)(a).

(5) "Day care facility" has the meaning provided for under 52-2-703, MCA.

~~(6) "Department" means the Department of Public Health and Human Services~~.

~~(7)~~(6) "Directly observed therapy (DOT)" means the method whereby a trained ~~health-care~~ health care worker or another trained designated person watches a patient swallow each dose of antituberculosis medication and documents it. DOT can include electronic directly observed therapy (eDOT) utilizing a video conferencing application only with express permission from the state TB program.

(8) "~~2007~~ Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" means the ~~guideline published by the Centers for Disease Control and Prevention in association with the Healthcare Infection Control Practices Advisory Committee~~ publication adopted and incorporated by reference in ARM 37.114.105(1)(b).

(9) remains the same, but is renumbered (7).

(10) through (16) remain the same, but are renumbered (9) through (15).

~~(17)~~(16) "Infection control precautions" means those measures necessary to prevent the transmission of disease from an infected person to another person, taking into consideration the specific suspected or confirmed communicable disease and the specific circumstances of the case. The infection control precautions required for a case admitted to a hospital or other health care facility are those measures identified as isolation precautions applicable to the specific disease in the "~~2007~~ Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" adopted and incorporated by reference in ARM 37.114.105(1)(b). The infection control precautions required for a case not admitted to a hospital or other health care facility are those measures identified as methods of control applicable to the specific disease in the "Control of Communicable Diseases Manual"~~, An Official Report of the American Public Health Association", 20th edition, 2015~~, adopted and incorporated by reference in ARM 37.114.105(1)(a). Infection control precautions are required, as stated in this rule, whether or not the person is subject to isolation.

(18) through (20) remain the same, but are renumbered (17) through (19).

~~(21) "Isolation" means separation during the period of communicability of an infected or probably infected person from other persons, in places and under conditions approved by the department or local health officer and with observance of all applicable infection control precautions.~~

(22) and (23) remain the same, but are renumbered (20) and (21).

~~(24) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. As used in these rules, the term will include the authorized representative of a local health officer~~.

(25) and (26) remain the same, but are renumbered (22) and (23).

~~(27) "Physician" means a person licensed to practice medicine in any jurisdiction in the United States or Canada~~.

(28) remains the same, but is renumbered (24).

~~(29) "Quarantine" means those measures required by a local health officer or the department to prevent transmission of disease to or by those individuals who have been or are otherwise likely to be in contact with an individual with a communicable disease.~~

(30) and (31) remain the same, but are renumbered (25) and (26).

~~(32)~~(27) "Sexually transmitted ~~disease~~ infection" means human immunodeficiency virus (HIV) infection, syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, or all chlamydia trachomatis infections including chlamydial genital infections.

~~(33)~~(28) "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" means the guidelines ~~published by the U.S. Centers for Disease Control and Prevention~~ adopted and incorporated by reference in ARM 37.114.105(1)(c).

(34) through (36) remain the same, but are renumbered (29) through (31).

(32) "Youth camp" has the meaning provided for under 50-52-101, MCA.

AUTH: 50-1-202, 50-2-116, 50-17-103, MCA
IMP: 50-1-202, 50-17-103, 50-18-101, MCA

37.114.105 INCORPORATION BY REFERENCE (1) The department adopts and incorporates by reference the following publications:

(a) The "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", ~~20th~~ 21st edition, ~~2015~~ 2022, which lists and specifies control measures for communicable diseases.

(b) The "2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings," published by the U.S. Centers for Disease Control and Prevention, which specifies precautions that should be taken to prevent transmission of communicable diseases for cases admitted to a hospital or other health care facility.

(c) The "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines, ~~2015~~ 2021," ~~are~~ published by the U.S. Centers for Disease Control and Prevention in the ~~June 5, 2015~~ July 23, 2021, Morbidity and Mortality Weekly Report, volume ~~64~~ 70, hereafter referred to as "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines, ~~2015~~ 2021," and specify the most currently accepted effective treatments for sexually transmitted ~~diseases~~ infections.

(d) The "Food Code, 2013, Recommendations of the United States Public Health Service, Food and Drug Administration," published by the National Technical Information Service.

(e) through (g) remain the same.

(2) To obtain, or for information on how to obtain, any document or publication incorporated by reference, contact the Department of Public Health and Human Services, Public Health and Safety Division, ~~Communicable Disease Control and Prevention Bureau~~ Epidemiology and Scientific Support, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406) 444-~~0919~~ 0273, or by visiting ~~its~~ our website at: https://dphhs.mt.gov/publichealth/cdepi/reporting.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.114.201 REPORTERS (1) With the exceptions noted in (3), (4), and (5), any person, including a physician, dentist, nurse, medical examiner, other health care practitioner, administrator of a health care facility or laboratory, public or private school administrator, day care facility or youth camp personnel, or laboratory professional, who knows or has reason to believe that a case exists of a reportable disease or condition defined in ARM 37.114.203 must immediately report to the local health officer the information specified in ARM 37.114.205(1) and (2).

(2) through (5) remain the same.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.203 REPORTABLE DISEASES AND OTHER CONDITIONS OF PUBLIC HEALTH IMPORTANCE (1) The following communicable diseases and conditions and other conditions of public health importance are reportable:

(a) through (p) remain the same.

(q) Coronavirus Disease 2019 (COVID-19);

(q) through (ah) remain the same, but are renumbered (r) through (ai).

~~(ai)~~(ak) ~~Lead poisoning (≥ five micrograms per deciliter µg/dL total blood lead levels)~~ Lead levels in a venous blood specimen at any level;

(aj) Lead levels in a capillary blood specimen of ≥ 3.5 micrograms per deciliter(µg/dL) in a person less than 16 years of age;

(aj) through (ap) remain the same, but are renumbered (al) through (ar).

(as) Melioidosis;

(aq) remains the same, but is renumbered (at).

~~(ar)~~(au) Mercury poisoning (≥ ~~200~~ ten µg/L total mercury in urine; or ≥ ~~20~~ ten µg elemental mercury/g creatinine in urine; or ≥ ~~10~~ ten µg/L elemental, organic, and inorganic blood mercury levels);

(av) Monkeypox;

(as) through (az) remain the same, but are renumbered (aw) through (bd).

(be) Salmonella Paratyphi infection;

(bf) Salmonella Typhi infection;

~~(ba)~~(bg) Salmonellosis ~~(including Salmonella Typhi and Paratyphi)~~;

(bb) through (bs) remain the same, but are renumbered (bh) through (by).

(2) Also reportable is an outbreak of any communicable disease listed in the "Control of Communicable Diseases Manual"~~, an Official Report of the American Public Health Association" (20th edition, 2015)~~ that occurs in an institutional or congregate setting and any unusual incident of unexplained illness or death in a human or animal with potential human health implications.

AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA
IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.204 REPORTS AND REPORT DEADLINES (1) A local health officer must immediately report (within four hours) to the department by telephone the information cited in ARM 37.114.205(1) through (2) whenever a case of one of the following diseases or other condition of public health importance is suspected or confirmed:

(a) through (h) remain the same.

(2) A local health officer must transmit by telephone or secure electronic means to the department the information required by ARM 37.114.205(1) and (2) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) through (a)(vii) remain the same.

(viii) Melioidosis;

(ix) Monkeypox;

(viii) through (xi) remain the same, but are renumbered (x) through (xiii).

(b) through (b)(xiii) remain the same.

(xiv) Coronavirus Disease 2019 (COVID-19);

(xiv) through (xxv) remain the same, but are renumbered (xv) through (xxvi).

~~(xxvi)~~(xxviii) ~~Lead poisoning~~ Lead levels in a venous blood specimen at any level ~~(≥ five micrograms per deciliter, µg/dL total blood lead levels)~~;

(xxvii) Lead levels in a capillary blood specimen of ≥ 3.5 micrograms per deciliter(µg/dL) in a person less than 16 years of age;

(xxvii) through (xxxii) remain the same, but are renumbered (xxix) through (xxxiv).

~~(xxxiii)~~(xxxv) Mercury poisoning (≥ ~~200~~ ten µg/L total mercury in urine; or ≥ ~~20~~ ten µg elemental mercury/g in creatinine in urine; or ≥ ~~10~~ ten µg/L elemental, organic, and inorganic blood mercury levels);

(xxxiv) through (xxxvii) remain the same, but are renumbered (xxxvi) through (xxxix).

(xl) Salmonella Paratyphi infection;

(xli) Salmonella Typhi infection;

~~(xxxviii)~~(xlii) Salmonellosis ~~(including Salmonella Typhi and Paratyphi)~~;

(xxxix) through (lii) remain the same, but are renumbered (xliii) through (lvi).

(3) through (5) remain the same.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA
IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.314 INVESTIGATION OF A CASE (1) remains the same.

(2) If the local health officer finds that the nature of the disease and the circumstances of the case or outbreak warrant such action, the local health officer must:

(a) and (b) remain the same.

(c) take appropriate steps, as outlined in the "Control of Communicable Diseases Manual"~~, An Official Report of the American Public Health Association" (20th edition, 2015)~~, to prevent or control the transmission of disease; and~~; and~~

(d) remains the same.

(3) Whenever the identified source of a reportable disease or a person infected with or exposed to a reportable disease who should be isolated, quarantined, interviewed, or placed under surveillance is located outside of the jurisdiction of the local health officer, the local health officer must coordinate with the department to notify the health officer of the relevant jurisdiction.

AUTH: 50-1-202, 50-2-118, 50-17-103, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102, 50-18-107, 50-18-108, MCA

37.114.315 POTENTIAL OUTBREAKS (1) Whenever a communicable disease listed in ARM 37.114.203, or the "Control of Communicable Diseases Manual", ~~, An Official Report of the American Public Health Association" (20th edition, 2015)~~, or other communicable disease that constitutes a threat to the health of the public, becomes so prevalent as to endanger an area outside of the jurisdiction where it first occurred, the local health officer of the jurisdictional area in which the disease occurs must notify and cooperate with the department to control the transmission of the disease in question.

AUTH: 50-1-202, MCA
IMP: 50-1-202, 50-2-118, MCA

37.114.501 MINIMAL CONTROL MEASURES (1) ~~The department, except as otherwise provided in this subchapter, adopts and incorporates by reference the control measures in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association" (20th edition, 2015)~~ The control measures described in the "Control of Communicable Diseases Manual" must be employed, unless otherwise provided in this subchapter. Unless a particular control measure specifies who is responsible, the local health officer or the authorized representative of a local health officer must:

(a) and (b) remain the same.

AUTH: 50-1-202, 50-2-116, 50-2-118, MCA
IMP: 50-1-202, 50-2-116, 50-2-118, MCA

37.114.512 CHANCROID (1) The local health officer or the department must either employ or ensure that control measures as outlined in the ~~Centers for Disease Control and Prevention~~ "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" are followed.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-18-102, MCA

37.114.515 CHLAMYDIA INFECTION (1) The local health officer or the department must either employ or ensure that control measures as outlined in the ~~Centers for Disease Control and Prevention~~ "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" are followed.

(2) ~~An individual who contracts the infection must be interviewed by the local health officer to determine the person's sexual contacts, and those contacts must be provided with appropriate medical treatment~~ The local health officer must interview an individual who contracts the infection in order to determine the person's sexual contacts, and must ensure that those contacts are examined and receive the medical treatment indicated by clinical or laboratory findings.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

37.114.530 GONORRHEA (1) The local health officer or the department must either employ or ensure that control measures as outlined in the ~~Centers for Disease Control and Prevention~~ "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" are followed.

(2) remains the same.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

37.114.531 GRANULOMA INGUINALE (1) The local health officer or the department must either employ or ensure that control measures as outlined in the ~~Centers for Disease Control and Prevention~~ "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" are followed.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-18-102, MCA

37.114.552 LYMPHOGRANULOMA VENEREUM (1) The local health officer or the department must either employ or ensure that control measures as outlined in the ~~Centers for Disease Control and Prevention~~ "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" are followed.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-18-102, MCA

37.114.583 SYPHILIS (1) The local health officer or the department must either employ or ensure that control measures as outlined in the ~~Centers for Disease Control and Prevention~~ "Sexually Transmitted ~~Diseases~~ Infections Treatment Guidelines~~, 2015~~" are followed.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA
IMP: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

4. The department proposes to repeal the following rule:

ARM 37.114.586 TUBERCULOSIS

AUTH: 50-1-202, 50-2-118, MCA
IMP: 50-1-202, 50-2-118, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend and repeal the above-stated rules pertaining to communicable disease control.

The proposed amendments are necessary to keep Montana's communicable disease control rules current with national disease surveillance, investigation, and control recommendations. The proposed amendments reflect changing knowledge of improved disease specific control measures. The department is also proposing amendments to simplify and clarify references to publications adopted and incorporated by reference with the rules.

ARM 37.114.101
The department is proposing to amend this rule to remove references to the titles of publications adopted and incorporated by reference because the titles for these publications are identified under ARM 37.114.105. The department is also proposing to revise the rule to remove definitions for terms that are already defined in statute.

ARM 37.114.105
The department is proposing to amend this rule to update the guidelines for the control of communicable disease and treatment of sexually transmitted infections to reference the most current version of these guidelines. These updated guidelines reflect changing knowledge of improved disease specific control measures and are necessary to keep Montana's communicable disease control rules current with the best available practices.

ARM 37.114.201
The department is proposing to amend this rule to clarify that day care facilities and youth camps are entities required to report a reportable disease or condition to the local health officer. In practice, many day care facilities and youth camps already report reportable diseases or conditions because ARM 37.114.203 requires reporting of an outbreak of communicable disease in an institutional or congregate setting. Day care facilities and youth camps are congregate settings. The proposed amendment clarifies reporting requirements for these types of establishments for prevention and control of outbreaks to protect the health of infants, children, and staff.

ARM 37.114.203
The department is proposing to update this rule to align it with the nationally notifiable disease listing terminology and to better define reportable diseases and outbreaks. The department is proposing to amend the definition of blood lead levels and mercury poisoning and to clarify the *Salmonella*-related diseases to report to

align them with best available surveillance practices. The department is also proposing to revise the rule to refer to ARM 37.114.105, which incorporates by reference the communicable disease control manual to identify reportable outbreaks in institutional and congregate settings. The department is proposing to add coronavirus disease 2019 (COVID-19), melioidosis, and monkeypox diseases to the list of notifiable diseases and conditions.

Coronavirus disease 2019 (COVID-19) is a highly contagious respiratory disease that was first identified in March 2020. Presently, this disease presents high morbidity and mortality among the Montana population. The department has received reports of COVID-19 as required by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) through the duration of the federal public health emergency. The department is proposing to add COVID-19 to the reportable diseases and conditions list to continue surveillance of COVID-19 incidence (cases), following the best available surveillance practice, to measure the burden of disease, monitor community transmission levels, detect emerging variants of concern, inform public health response, and monitor the effectiveness of COVID-19 vaccinations and therapeutics. The addition of COVID-19 to the list of reportable communicable disease is consistent with the current listing of other infectious respiratory diseases on this list such as pertussis, as well as the listing of another coronavirus, severe acute respiratory syndrome-associated coronavirus (SARS-CoV) disease.

Melioidosis is a rare but potentially severe and fatal disease caused by the bacterium *Burkholderia pseudomallei*, which is designated a Tier 1 Select Agent by the National Select Agent Program because it presents a risk for bioterrorism use. The organism is endemic in some parts of the world. Identification of a single person with melioidosis without appropriate travel history indicates either an accidental or intentional introduction of this organism. The department is proposing to add melioidosis to the list of reportable diseases and conditions to allow for prompt public health notification to facilitate rapid response to protect the public's health.

Monkeypox is a rare zoonotic disease that is caused by infection with monkeypox virus. Recently, an unprecedented and rapid increase in detection of this disease among a wide geographic area and among people without traditional risk factors indicate that this is an emerging public health concern that requires prompt public health notification to facilitate rapid response to control this communicable disease.

Salmonellosis, *Salmonella* Typhi infection, and *Salmonella* Paratyphi infection are distinct diseases which require unique public health control measures. The proposed change clarifies the distinct *Salmonella*-related diseases to report to align with the best available surveillance practices.

ARM 37.114.204

The department is proposing to revise this rule to update certain reportable conditions and the associated timeline for reporting those conditions. The department is proposing to amend the reporting requirements to align with the

generally accepted surveillance definition of blood lead levels, coronavirus disease 2019 (COVID-19), melioidosis, mercury poisoning, and monkeypox. The department is also proposing to revise the rule to align with the proposed revisions to definitions under ARM 37.114.101.

ARM 37.114.314, 37.114.315, 37.114.501, 37.114.512, 37.114.515, 37.114.530, 37.114.531, 37.114.552, and 37.114.583
The department is proposing non-substantive revisions to these rules to align with the revisions being made to definitions under ARM 37.114.101.

ARM 37.114.586
The department is proposing to repeal this rule because the control of Tuberculosis is addressed under ARM Title 37, chapter 114, subchapter 10, and it is unnecessary to cross-reference these rules.

Fiscal Impact

The department anticipates no fiscal impact regarding the proposed rulemaking.

6. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.89.1001, 37.89.1003, 37.89.1005, 37.89.1007, and 37.89.1009 pertaining to county and tribal matching grant	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 26, 2022, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81363956685?pwd=TWZzeWlRRnNJWUZaZW94NnF4RVkydz09, Meeting ID: 813 6395 6685, and Password: 607667; or

(b) Dial by telephone +1 646 558 8656, Meeting ID 813 6395 6685, and Password: 607667. Find your local number: https://mt-gov.zoom.us/u/kb0f5Xqfhm.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 12, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.89.1001 ~~GRANTS TO COUNTIES, GOALS AND OUTCOMES~~ CRISIS DIVERSION GRANTS, PURPOSE (1) ~~A county or group of counties may apply to the department for a grant under this subchapter.~~ Crisis Diversion Grants, as provided under Title 53, chapter 21, part 12, MCA, provide funding to eligible county and federally recognized tribal governments to support the implementation of community-based jail diversion, crisis intervention services, and short-term inpatient treatment services for individuals with mental illness. The grants are in the form of matching state funds awarded based on criteria set forth in 53-21-1203, MCA.

~~(2) In developing grant applications, counties should consider the following goals:~~

~~(a) to reduce reliance on admissions to Montana State Hospital (MSH) for emergency and court ordered detention and evaluation;~~

~~(b) to support the treatment of mental illness closer to home by increasing local treatment capacity and creating better treatment outcomes;~~

~~(c) to increase the number of intervention and jail diversion options that may provide judges, county attorneys, and law enforcement with alternatives to incarceration; and~~

~~(d) to establish and support collaboration among community stakeholders to address community needs.~~

~~(3) The department expects grant applications to address the following outcomes:~~

~~(a) disruption of the consumer's life will be minimized and the effectiveness of treatment will be maximized, resulting in better treatment outcomes;~~

~~(b) financial and other resources will be retained in the community for jail diversion and crisis intervention; and~~

~~(c) inpatient capacity at MSH will be appropriately utilized.~~

AUTH: 53-21-1202, 53-21-1203, MCA
IMP: 53-21-1203, MCA

37.89.1003 ~~GRANTS TO COUNTIES~~ CRISIS DIVERSION GRANTS, APPLICATION AND PARTICIPANTS (1) ~~Only a county as defined in ARM 37.2.902 or a group of counties that have collaborated for the purpose established in 53-21-1203, MCA, may submit a grant application for matching fund grants awarded under this subchapter.~~ At the beginning of the program's funding cycle, the department will issue a request for proposal (RFP) describing the program requirements, evaluation criteria, and eligibility criteria for award of Crisis Diversion Grant funding.

(2) ~~A county or group of counties preferring to have a chief operating officer or other person submit a grant application may issue a document authorizing the chief operating officer or other person to act on their behalf. The authorization document must be included with the grant application.~~ The following entities may submit an application for Crisis Diversion Grants awarded under this subchapter:

(a) a county government as defined in ARM 37.2.902;

(b) a federally recognized tribal government; or

(c) any combination of (a) and (b).

(3) ~~Funds will be distributed only to a county or group of counties via a contract approved by the department. Counties must submit invoices to the department for funds.~~ A county or group of counties that includes tribal lands must demonstrate coordination efforts with tribal representatives to be eligible for Crisis Diversion Grants.

(4) The department will evaluate applications as set forth in the RFP and determine eligibility for a Crisis Diversion Grant. Counties and federally recognized tribal governments who the department determines are eligible for grants must enter into a contract with the department to receive the funding award.

AUTH: 53-21-1203, MCA
IMP: 53-21-1203, MCA

37.89.1005 ~~GRANTS TO COUNTIES~~ CRISIS DIVERSION GRANTS, DETERMINING GRANT AMOUNTS (1) The department will base ~~matching fund grants~~ Crisis Diversion Grants awarded under this subchapter on the criteria specified in 53-21-1203, MCA.

(2) The total amount of ~~matching fund grants~~ Crisis Diversion Grants will not exceed available funding ~~appropriated by the Montana Legislature~~.

(3) ~~The department will evaluate each county or multicounty grant application submitted pursuant to ARM 37.89.1009 and award matching fund grants based on the likelihood, as determined by the department, that the plan would promote appropriate utilization of the Montana State Hospital (MSH) for emergency and court-ordered detention and evaluation and would ultimately result in cost savings to the state if implemented.~~ For each county and federally recognized tribal government, the department will include in the request for proposal (RFP) the rate at which local funds will be matched. The match rate is based on the most recent Montana State Hospital admission data and census data, as provided in 53-21-1203, MCA.

(4) ~~The department will match county and other local entity funds or in-kind contributions using a sliding scale for state grants as provided in 53-21-1203, MCA.~~ The department will bi-annually recalculate the match rate.

~~(a) The sliding scale is determined by calculating historical county use of the state hospital using the previous year's admission data versus total state use of the state hospital and county population versus total state population.~~

~~(b) The department may grant up to 70% of the local investment to counties below the statewide average admission rate.~~

~~(c) The department may match the local investment of cash and in-kind contributions to any county whose MSH admissions are at or above the statewide average admission rate on a sliding scale of 50% to 70% in equal 5% increments. The department's match will not be less than 50% of the local investment.~~

(5) ~~The county population will be the figure published in Table 1: Annual Estimates of the Population for Counties of Montana: April 1, 2000 to July 1, 2007 (CO-EST2007-01-30). Source: Population Division, U.S. Census Bureau that is adopted and incorporated by reference. Copies of the table may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, P.O. Box 202905, Helena, MT 59620.~~ Eligible participants may use cash or in-kind contributions as matching funds.

(6) ~~The department will recalculate the sliding scale match rate annually using the formula described in 53-21-1203, MCA, based on the prior year's admissions to MSH.~~ If appropriation remains after grants have been allocated, the department will allocate remaining funds to a county or federally recognized tribal government that requests continued funding of a project funded in the previous biennium. In allocating these funds, the department will use the match rate published in the RFP.

AUTH: 53-21-1203, MCA
IMP: 53-21-1203, MCA

37.89.1007 ~~GRANTS TO COUNTIES~~ CRISIS DIVERSION GRANTS, ~~PRO~~

~~RATA~~ DISTRIBUTION (1) If the amount requested for ~~matching fund grants~~ Crisis Diversion Grants exceeds the funding available ~~in the legislative appropriation~~, the department shall allocate available funding based on a percentage of the total points awarded to an applicant ~~on the pro rata basis described in (2)~~.

(2) ~~The department will allocate funding by dividing available funding by the sum total population of all counties submitting a letter of intent and multiplying the result by the individual county population, subject to the matching fund requirements in ARM 37.89.1005. No county will receive a grant amount larger than the grant amount requested.~~ Points will be awarded by an evaluation committee, as described by the criteria listed within the request for proposal.

(3) If the amount requested for Crisis Diversion Grants exceeds the funding available, the department may use discretion to fund only specific activities within a proposal.

AUTH: 53-21-1203, MCA
IMP: 53-21-1203, MCA

37.89.1009 ~~GRANTS TO COUNTIES~~ CRISIS DIVERSION GRANTS, STRATEGIC PLAN REQUIREMENTS ~~(1) Letters of intent (LOI) to participate in the state fund matching grants will be accepted until two weeks after publication of the final adopted version of this rule and grant applications will be accepted until March 1, 2010 for fiscal year 2010 with the grant term concluding at the end of the fiscal year.~~

~~(2) For subsequent fiscal years, grant applications that continue or expand activities implemented with a previous year's funding may be given priority over new applications, if the applying county or group of counties have met the requirements of (5) and the department has determined that continuation of the plan would promote appropriate utilizations of the Montana State Hospital and would ultimately result in cost savings to the state.~~

~~(3) New and continued grants are subject to the matching requirements in ARM 37.89.1005.~~

~~(4)~~(1) Successful grant applicants will be those submitting a grant application with at least the following elements:

(a) a ~~county or multi-county~~ jail diversion and crisis intervention strategic plan~~,~~ ~~including~~ which must include a plan for community-based or regional emergency crisis response, ~~or~~ court-ordered detention and examination services~~,~~ ~~as well as~~ and short term inpatient treatment;

(b) a detailed proposal for how the ~~county or counties~~ grant applicant and other local entities will collaborate and commit local funds for mental health services for crisis intervention, jail diversion, involuntary precommitment, and short-term inpatient treatment costs including a plan for the collection and reporting of data and information;

(c) a detailed budget that identifies cash and in-kind local contribution amounts designated for match, anticipated expenses for each fiscal year being applied for ~~through June 30 of the funding fiscal year and~~ including start up or one time only costs. ~~Multi-county~~ Multi-jurisdiction grant applications must identify the county or federally recognized tribal government that will act as the fiduciary agent

for distribution of the grant funds;

(d) and (e) remain the same.

~~(5)~~(2) Each ~~county or group of counties~~ successful grant applicant will submit an annual report to the department within 30 days of the end of each funding year describing implementation of the strategic plan provided for in this rule, including key data elements as defined by the department, for the funded grant period.

AUTH: 53-21-1203, MCA
IMP: 53-21-1203, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Treatment Bureau of the Behavioral Health and Developmental Disabilities Division proposes to amend ARM 37.89.1001, 37.89.1003, 37.89.1005, 37.89.1007, and 37.89.1009 to improve Montana's Behavioral Health Crisis System and to facilitate the distribution of grant funding to urban, rural, frontier, and tribal communities, as provided in 53-21-1203, MCA.

Crisis Diversion Grants are awarded to eligible counties and federally recognized tribal governments to support community-based jail diversion, crisis intervention, and short-term inpatient treatment services for individuals with mental illness. The program is an integral source of funding in local communities for behavioral health crisis intervention and jail diversion services. The reasonable necessity for the proposed amendments is as follows:

- To align the program with Montana's Behavioral Health Crisis System Strategic Plan by developing sustainable, evidence based programs to support foundational crisis system infrastructure as recommended by Crisis Now and the Substance Abuse and Mental Health Services Administration (SAMHSA) national guidelines for Behavioral Health Crisis Care; and
- To provide for Crisis Diversion Grants to be awarded through a formal process in which counties and federally recognized tribal governments can seek funding in response to a request for proposal (RFP).

Previously, the local communities submitted a letter of intent about the need for matching funds for crisis diversion. The RFP will be issued biennially, after each legislative session, and will formalize the process and include the match rate for each county and tribal government based on the entity's admission rate to Montana State Hospital and census data, as provided in 53-21-1203, MCA.

Crisis Diversion Grants are the primary source of funding to communities for behavioral health crisis intervention and jail diversion services. The proposed amendments will enable Montana's Behavioral Health Crisis System to evolve and develop as local communities establish programs and infrastructure in response to local behavioral health needs.

Fiscal Impact

There is no fiscal impact pertaining to the amendment of the above-referenced rules.

5. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.71.107, 37.71.110, 37.71.404, 37.71.601, and 37.71.602 pertaining to low income weatherization assistance program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2022, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/86961229513?pwd=S3hWZGR0YnVMY0lUanM5QkdkYWwwZz09 Meeting ID: 869 6122 9513, Password: 163002; or

(b) Dial by telephone +1 646 558 8656, Meeting ID: 869 6122 9513, Password: 163002.
Find your local number: https://mt-gov.zoom.us/u/kedXTsT0RU.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.71.107 REFERRALS TO THE ~~QUALITY ASSURANCE DIVISION~~ OFFICE OF INSPECTOR GENERAL, PROGRAM COMPLIANCE BUREAU

(1) The ~~Quality Assurance Division~~ Office of Inspector General, Program Compliance Bureau (PCB) will have the power and duty to conduct an investigation to determine, based on the evidence gathered, whether a person or household has committed a program violation as defined in ARM 37.71.110.

(2) Requests to investigate suspected program violations must be sent to the department's Intergovernmental Human Services Bureau (IHSB), 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956. IHSB will review cases prior to referral to the PCB.

AUTH: 53-2-201, 90-4-201, MCA
IMP: 90-4-201, 90-4-202, MCA

37.71.110 WEATHERIZATION ASSISTANCE PROGRAM VIOLATIONS

(1) remains the same.

(2) If a person appears to have committed a program violation, the local contractor must report all facts of the matter to the Intergovernmental Human Services Bureau (IHSB) to determine if the case should be referred to the ~~department's Quality Assurance Division~~ Office of Inspector General, Program Compliance Bureau (PCB). The PCB may refer the matter to the Department of Justice or the county attorney of the county in which the person resides for further action.

AUTH: 53-2-201, 90-4-201, MCA
IMP: 90-4-201, 90-4-202, MCA

37.71.404 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, ELIGIBILITY (1) remains the same.

(2) A household is financially eligible for LIWAP if:

(a) the household is eligible for Low Income Home Energy Assistance Program (~~LIEAP~~LIHEAP) for the current heating season; or

(b) the household is not eligible for ~~LIEAP~~LIHEAP for the current heating season because the household's countable income exceeds 150% of the ~~FPL~~ federal poverty level (FPL), but:

(i) the household's countable income does not exceed 200% of the ~~federal poverty level (~~FPL~~)~~; and

(ii) the household is otherwise eligible for ~~LIEAP~~ LIHEAP.

(3) If a household has not applied for ~~LIEAP~~ LIHEAP for the current heating season but wishes to receive weatherization services through LIWAP, the household must complete a ~~an application for LIEAP~~ LIHEAP application and comply with all requirements of ARM 37.70.305 and 37.70.311. The household is not required to accept ~~LIEAP~~ LIHEAP benefits in order to receive weatherization services.

(4) remains the same.

(5) In determining whether a household is otherwise eligible for ~~LIEAP~~ LIHEAP, the provisions of ARM 37.70.110, 37.70.401, and 37.70.408 will be applied.

AUTH: 53-2-201, MCA
IMP: 53-2-201, 90-4-201, 90-4-202, MCA

37.71.601 ELIGIBILITY FOR WEATHERIZATION SERVICE: PRIORITIES

(1) remains the same.

(2) Except as provided in (2)(a), a dwelling is not eligible for weatherization services funded with NorthWestern Energy free weatherization (NWE) funds if the dwelling has been weatherized within the ten years following the date of the previous weatherization completion.

~~(a) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to address a weatherization related imminent threat to the health or~~

~~safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.~~

(b) remains the same but is renumbered (a).

(3) Except as provided in (3)(a), a dwelling is not eligible for weatherization services funded with ~~LIEAP~~ LIHEAP weatherization funds if the dwelling has been weatherized within the ten years following the date of the previous weatherization completion.

~~(a) Regardless of the time limitations imposed in (2), LIEAP funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.~~

~~(b)~~(a) Regardless of the time limitations imposed in (3), ~~LIEAP~~ LIHEAP funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(4) Community residential facilities as defined at 76-2-411, MCA, that are the residence for low income elderly individuals or individuals with a disability are eligible for weatherization services.

(5) and (6) remain the same.

(7) Weatherization will be scheduled to minimize travel and other nonproductive costs.

(a) If nonproductive costs are excessive, the scheduled home may be delayed for weatherization, ~~at a later date~~ but in no instance will the scheduled home be delayed longer than one year or the end of the contract period whichever comes first.

(8) Eligible homes~~,~~ scheduled to receive partial weatherization from any other agency~~,~~ may be prioritized higher to allow coordination and avoid duplication of weatherization services.

(9) If at least 66 ~~percent~~% of ~~the~~ units in a multi-unit building, or 50 ~~percent~~% for duplexes and four-unit buildings, are eligible for weatherization, and one of the units is prioritized high enough to be scheduled for service, all of the units in the building, including units that are not eligible for weatherization, will be weatherized to avoid nonproductive costs.

(10) When a dwelling is prioritized high enough to be scheduled for weatherization work, the delivery of services will be deferred until a later date if providing the services would pose a threat to the health or safety of either the weatherization installers or any other person. In such cases, the delivery of services will be postponed until the conditions that pose a threat to health or safety have been resolved. The department adopts and incorporates by reference the department's 2022 Weatherization ~~Assistance Program (WAP)~~ Policy Manual effective ~~July 1, 2021~~ July 1, 2022, which outlines the circumstances that justify a deferral of weatherization services. The ~~WAP~~ Weatherization Policy Manual is located at the department's web site at ~~http://dphhs.mt.gov/hcsd/energyassistance.aspx~~ https://dphhs.mt.gov/hcsd/energyassistance/ or a copy may be obtained from the

Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956.

AUTH: 53-2-201, 90-4-201, MCA
IMP: 53-2-201, 90-4-201, 90-4-202, MCA

37.71.602 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE (1) Weatherization assistance ~~will be made~~ is available to eligible households in accordance with the prioritized measures as determined by the State's Computerized Energy Audit (CEA) system.

(2) Dwellings chosen to be weatherized must receive those measures determined to be cost effective as defined in 10 CFR 440, as amended through ~~July 1, 2021~~ July 1, 2022. The department adopts and incorporates by reference 10 CFR 440, as amended through ~~July 1, 2021~~ July 1, 2022. A copy of these federal regulations is available at https://www.ecfr.gov/current/title-10/chapter-II/subchapter-D/part-440 or may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Division, ~~111 N. Jackson St.~~ 1400 Carter Drive, P.O. Box ~~202925~~ 202956, Helena, MT 59620-~~2925~~ 2956.

(3) The department adopts and incorporates by reference the department's 2022 Weatherization ~~Assistance Program (WAP)~~ Policy Manual and National Renewable Energy Laboratory (NREL) Standard Work Specifications effective ~~July 1, 2021~~ July 1, 2022. The ~~WAP~~ Weatherization Policy Manual is located at the department's web site at ~~http://dphhs.mt.gov/hcsd/energyassistance.aspx~~ https://dphhs.mt.gov/hcsd/energyassistance/ or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620-2956. The NREL Standard Work Specifications are located at the NREL web site at https://sws.nrel.gov/.

AUTH: 53-2-201, 90-4-201, MCA
IMP: 53-2-201, 90-4-201, 90-4-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.71.107, 37.71.110, 37.71.404, 37.71.601, and 37.71.602 pertaining to the Low Income Weatherization Assistance Program (LIWAP). LIWAP is a program to help low income households save home heating costs and address health and safety issues. It is necessary to amend the referenced rules to update program and agency names, incorporate the most recent versions of policy and standardization manuals, update references to federal regulations (CFR), and to clarify language.

ARM 37.71.107 and 37.71.110

The department proposes changing "Quality Assurance Division" to "Office of Inspector General" to reflect changes in the agency name.

ARM 37.71.404 and 37.71.601
The department proposes changing all references to Low Income Energy Assistance Program (LIEAP) to Low Income Home Energy Assistance Program (LIHEAP). This change is necessary to reflect the change in program name. Minor changes in punctuation are proposed to improve clarity.

ARM 37.71.601(2)(a); (3)(a)
The department proposes to remove the allowance to only address a furnace emergency. These subsections are being removed as heating system replacement first requires Energy Conservation Measure (ECM) testing to determine the Savings-to-Investment Ratio, which requires a complete weatherization audit of the home. In these situations, other means are available to fund health and safety repairs or the replacement of an eligible heating system.

ARM 37.71.601(10)
The department proposes incorporating by reference the 2022 Weatherization Policy Manual, amending the effective date to the July 1, 2022, for the 2022 program year, and providing an updated URL. These changes are necessary to ensure readers can locate and review the appropriate policy manual.

ARM 37.71.602
The department proposes updating the reference to the CFR. This is necessary to ensure the most current edition of 10 CFR, Part 440 is utilized. Minor language changes are proposed to improve clarity.

The department also proposes incorporating by reference the updated 2022 Weatherization Policy Manual and the National Renewal Energy Laboratory (NREL) Standard Work Specifications (SWS), and to provide web addresses for both. These changes are necessary to notify users of the most recent weatherization measures and standards being used by the department.

Fiscal Impact

The Low Income Energy Assistance Program, the U.S. Department of Energy, and Bonneville Power Administration are 100% federally funded. NorthWestern Energy is 100% utility funded. The department estimates Montana will receive the same amount in utility funds, compared to last heating season. It is estimated that 17,500 households will qualify for weatherization benefits this year, which is comparable to last year.

5. These amendments will be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.36.604 pertaining to financial eligibility criteria	))))	AMENDED NOTICE OF PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 27, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-985 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 782 of the 2022 Montana Administrative Register, Issue Number 10. A public hearing was held on June 16, 2022.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The statement of reasonable necessity in the original proposal notice stated an incorrect effective date. This rule will be retroactive. Furthermore, the time period for public comment is being extended to September 2, 2022.

4. The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

Fiscal Impact

There would be no fiscal impact due to the increase in the FPL. A minimal number of clients that are served by the MTAP exceed the FPL. The majority are well under the FPL. An increase in the FPL would be very minimal and most likely not yield any additional costs to the MTAP program.

The department intends for the proposed amendments to ~~be effective the day after publication~~ have a retroactive effective date of January 12, 2022.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Valerie St. Clair, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT

59604-4210, no later than 5:00 p.m. on September 2, 2022. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ ALEEA SHARP
Aleea Sharp
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.97.132, 37.106.301, 37.106.302, 37.106.316, 37.106.401, 37.106.601, 37.106.704, 37.106.804, 37.106.1505, and 37.106.2311 and the repeal of ARM 37.106.605, 37.106.645, 37.106.1101, 37.106.1103, 37.106.1104, 37.106.1105, 37.106.1110, 37.106.1111, 37.106.1112, 37.106.1120, 37.106.1121, 37.106.1122, 37.106.1123, 37.106.1124, 37.106.1130, 37.106.1131, and 37.106.1132 pertaining to Health Care Facility Revisions	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 30, 2022, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89044728391?pwd=a1lyRk56eFpBaE1pM0p0Rlg1ZzNOdz09, Meeting ID: 890 4472 8391, and Password: 603592; or

(b) Dial by Telephone: +1 646 558 8656, Meeting ID: 890 4472 8391, and Password: 603592. Find your local number: https://mt-gov.zoom.us/u/k2hvnkBFI.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS (1) and (2) remain the same.

(3) In addition to the specific requirements set out in subchapters 1 and 2 of this chapter, all staff working in a YCF must:

(a) be at least ~~21~~ 19 years of age;

(b) through (4) remain the same.

(5) A "personal statement of health for licensure" form must be completed for each person subject to the requirements of this rule. The form must be submitted to the department upon hire and annually thereafter. The "personal statement of health for licensure" form is available from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(6) through (8) remain the same.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-111, 52-2-603, 52-2-622, MCA

37.106.301 DEFINITIONS The following definitions apply in this subchapter:

(1) through (4) remain the same.

(5) "Observation bed or unit" means a bed or unit within a hospital, critical access hospital, or specialty hospital~~, or medical assistance facility~~ that includes ongoing short-term treatment, assessment, and reassessment, and is not considered an inpatient bed. Patient stays in observation beds are limited to 48 hours during which time a decision must be made whether a patient requires further treatment as an inpatient.

(6) and (7) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-104, 50-5-105, 50-5-106, 50-5-107, 50-5-108, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-208, 50-5-210, 50-5-211, 50-5-212, 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA

37.106.302 MINIMUM STANDARDS OF CONSTRUCTION: GENERAL REQUIREMENTS (1) remains the same.

(2) The construction of, alteration, or addition to a health care facility shall comply with:

(a) the ~~2010~~ 2018 edition of the "American Institute for Architects (AIA) Guidelines for Design and Construction of Hospitals and Health Care Facilities," which the department adopts and incorporates by reference, which sets forth the minimum construction equipment requirements deemed necessary by the state Department of Public Health and Human Services to ensure health care facilities can be efficiently maintained and operated to furnish adequate care. Copies of the cited edition are available at the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953~~; and at the following web site http://www.fgiguidelines.org/guidelines2010.php~~;

(b) ~~NFPA 101, "Life Safety Code", 2012 edition~~ "NFPA 101: Life Safety Code Handbook," 2012 Edition published by the ~~national fire protection association~~ National Fire Protection Association, which the department adopts and incorporates by reference, which sets forth construction and operation requirements designed to protect against fire hazards. Copies of the cited edition are available at the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953~~; and at the following web site http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=101&cookie%5Ftest=1~~;

(c) the 2009 "American National Standards Institute A117.1," which the department adopts and incorporates by reference, which sets forth standards for buildings and facilities providing accessibility and usability for physically handicapped individuals. Copies of the cited edition are available at the Department of Public Health and Human Services, ~~Quality Assurance Division~~, Office of Inspector General 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953~~; and at the following web site http://webstore.ansi.org/RecordDetail.aspx?sku=ICC+A117.1-2009~~;

(d) through (3) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-201, 50-5-204, MCA

37.106.316 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: SECURED CARE UNIT WITHIN A LICENSED LONG-TERM HEALTH CARE FACILITY (1) remains the same.

(2) Special locking arrangements as specified in the ~~2012 Edition of the NFPA Life Safety Code~~ "NFPA 101: Life Safety Code Handbook", 2012 Edition must be utilized, or an acceptable alternative is based on an equivalency for the automatically releasing, panic hardware required by section 7.2.1.6.1 of the ~~Life Safety Code~~ "NFPA 101: Life Safety Code Handbook", 2012 Edition. Where local authorities having jurisdiction allow, the following conditions apply to this alternative:

(a) through (e) remain the same.

(3) A secured care unit is considered a separate nursing unit and must have a nurse station located within the secured care unit. At a minimum, the nurse station must provide the following:

(a) through (d) remain the same.

(e) a nurse call system in compliance with table 2.1-4 as found in the ~~2010~~ 2018 Edition of the AIA Guidelines for Design and Construction of Hospitals and Health Care Facilities.

(4) through (8) remain the same.

(9) A secured care unit must provide for a nourishment station. The minimum standards for a nourishment station as indicated in section 2.5-2.2.6.7 of the ~~2010~~ 2018 Edition of the AIA Guidelines for Design and Construction of Hospitals and Health ~~care facilities~~ Care Facilities include:

(a) through (10) remain the same.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

37.106.401 MINIMUM STANDARDS FOR A HOSPITAL: GENERAL REQUIREMENTS (1) A hospital shall comply with the Conditions of Participation for Hospitals in 42 CFR ~~482.2 through 482.62, revised as of October 1, 2002~~ subchapter G part 482.

(2) If a hospital provides skilled nursing care or intermediate nursing care, as those levels of care are defined in 50-5-101, MCA, the hospital shall comply with the skilled nursing facility requirements listed in 42 CFR ~~482.66(b) revised as of October 1, 2002~~ subchapter G part 483.

(3) The department ~~hereby~~ adopts and incorporates by reference 42 CFR ~~482.2 through 482.62 and 42 CFR 482.66(b), revised as of October 1, 2002~~ subchapter G part 482 and 42 CFR subchapter G part 483. 42 CFR ~~482.2 through 482.62~~ subchapter G part 482 sets forth the conditions of participation a hospital must meet to participate in the Medicare Program. 42 CFR ~~482.66(b)~~ subchapter G part 483 sets forth the skilled nursing facility requirements a hospital provider of long term care services must meet to participate in the Medicare Program. A copy of the regulations may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-404, MCA
IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.601 MINIMUM STANDARDS FOR A SKILLED AND SKILLED/INTERMEDIATE CARE FACILITY: GENERAL REQUIREMENTS (1) A skilled nursing care facility shall comply with the Conditions of Participation for Skilled Nursing Facilities as set forth in 42 CFR ~~405, Subpart K~~ subchapter G part 483. An intermediate care facility shall comply with the requirements set forth in 42 CFR ~~442, Subparts E and F~~ subchapter G subpart I. A copy of the cited ~~rules~~ requirements ~~is available at~~ may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-404, MCA
IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.704 MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital must comply with the conditions of participation for critical access hospitals under 42 CFR 485 Subpart F~~, updated through May 2005~~. The department adopts and incorporates by reference 42 CFR 485 Subpart F~~, updated through May 2005~~. A copy of the cited requirements ~~is available~~ may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(2) through (6) remain the same.

AUTH: 50-5-233, MCA
IMP: 50-5-233, MCA

37.106.804 GENERAL REQUIREMENTS (1) A specialty hospital must comply with the requirements under 42 CFR ~~482.2 through 482.62~~ subchapter G subpart E. The department adopts and incorporates by reference 42 CFR ~~482.2 through 482.62 as revised on May 16, 2012~~ subchapter G subpart E, which sets forth the Centers for Medicare and Medicaid Services Conditions of Participation for Hospitals as the standard for the operation of specialty hospitals in Montana. A copy of ~~42 CFR 482.2 through 482.62~~ the cited requirements may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-545, MCA
IMP: 50-5-103, 50-5-245, MCA

37.106.1505 MINIMUM STANDARDS FOR A HOME HEALTH AGENCY (1) A home health agency shall comply with the Conditions of Participation for Home Health Agencies as set forth in 42 CFR ~~405, Subpart L~~ subchapter G part 484. A copy of the cited ~~rule~~ requirements ~~is available at~~ may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-404, MCA
IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.2311 MINIMUM STANDARDS FOR A RESIDENTIAL HOSPICE FACILITY (1) through (4) remain the same.

(5) A residential hospice facility must meet the life-safety requirements set forth in ~~chapters 32 and 33, Life Safety Code Handbook, National Fire Protection Association, 2000 Edition,~~ the 2012 NFPA 101 Life Safety Code for residential board and care occupancies.

(6) through (11) remain the same.

(12) The department adopts and incorporates by reference ~~chapters 32 and 33 of the Life Safety Code Handbook, National Fire Protection Association, 2000 Edition,~~ the 2012 NFPA 101 Life Safety Code which establishes building construction requirements for residential board and care occupancies. Copies of the above standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MD 02169, or by using their web site, www.nfpa.org.catalogue.

(13) remains the same.

AUTH: 50-5-103, 50-5-210, MCA
IMP: 50-5-210, MCA

4. The department proposes to repeal the following rules:

37.106.605 MINIMUM STANDARDS FOR A SKILLED NURSING CARE FACILITY FOR EACH 24 HOUR PERIOD: STAFFING

AUTH: 50-5-103, 50-5-404, MCA
IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.645 MINIMUM STANDARDS FOR AN INTERMEDIATE DEVELOPMENTAL DISABILITY CARE FACILITY

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-201, 50-5-204, MCA

37.106.1101 MEDICAL ASSISTANCE FACILITIES: DEFINITIONS

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1103 MEDICAL ASSISTANCE FACILITIES: ORGANIZATIONAL STRUCTURE; GOVERNING BODY

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1104 MEDICAL ASSISTANCE FACILITIES: MEDICAL STAFF

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1105 MEDICAL ASSISTANCE FACILITIES: MEDICAL RECORDS

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1110 MEDICAL ASSISTANCE FACILITIES: QUALITY ASSURANCE

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1111 MEDICAL ASSISTANCE FACILITIES: UTILIZATION REVIEW

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1112 MEDICAL ASSISTANCE FACILITIES: INFECTION CONTROL

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1120 MEDICAL ASSISTANCE FACILITIES: NURSING SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1121 MEDICAL ASSISTANCE FACILITIES: PHARMACEUTICAL SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1122 MEDICAL ASSISTANCE FACILITIES: RADIOLOGIC SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1123 MEDICAL ASSISTANCE FACILITIES: LABORATORY SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1124 MEDICAL ASSISTANCE FACILITIES: FOOD AND DIETETIC SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1130 MEDICAL ASSISTANCE FACILITIES: OUTPATIENT SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1131 MEDICAL ASSISTANCE FACILITIES: EMERGENCY SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

37.106.1132 MEDICAL ASSISTANCE FACILITIES: THIRD-PARTY SERVICES

AUTH: 50-5-103, MCA
IMP: 50-5-101, 50-5-103, 50-5-204, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to update the Health Care Facilities chapter to update construction guidelines to a current edition, to update subchapters, parts, and subparts of the Code of Federal Regulation (CFR) references to current subchapters, parts, and subparts, and to update Quality Assurance Division to its current title of Office of Inspector General.

The department proposes to repeal ARM 37.106.605, 37.106.645, and 37.106.1101 through 37.106.1132 as these rules either conflict directly with the CFR, or are rules set forth for facility types that no longer exist as health care facility types.

ARM 37.97.132
The department proposes to change this rule to move the 21-year-old age requirement for staff in the Youth Care Facilities to 19 in an effort to assist with staffing.

ARM 37.106.301
The department proposes a change to this rule to remove medical assistance facility from the definitions as it is no longer a health care facility type.

ARM 37.106.302
The department proposes a change to this rule to update the American Institute for Architects (AIA) Guidelines for Design and Construction of Hospitals and Health Care Facilities to a current edition. The department further proposes change to this rule to change the description of the NFPA edition that is required to read consistently in the rules it is mentioned in. The department also proposes to remove Quality Assurance Division to its current title of Office of Inspector General, and to remove inaccurate links to resource materials.

ARM 37.106.316
The department proposes a change to this rule to change the description of the NFPA edition that is required to read consistently in the rules it is mentioned in. The department proposes a change to this rule to update the AIA Guidelines for Design and Construction of Hospitals and Health Care Facilities to a current edition.

ARM 37.106.401
The department proposes a change to this rule to update the subchapters of the CFR reference to the current subchapters specific to hospitals. The department proposes to remove Quality Assurance Division to its current title of Office of Inspector General.

ARM 37.106.601

The department proposes a change to this rule to update the subchapters and subparts of the CFR reference to the current subchapters and subpart specific to Skilled and Skilled/Intermediate Care Facilities. The department proposes to remove Quality Assurance Division to its current title of Office of Inspector General.

ARM 37.106.605
The department proposes to repeal this rule as it conflicts with the requirements set forth in the CFR for Skilled Nursing Facilities.

ARM 37.106.645
The department proposes to repeal this rule as this facility type is no longer a health care facility and is not regulated by the CFR.

ARM 37.106.704
The department proposes a change to this rule to remove the requirement to refer to the subchapter of the CFR that was updated up to 2005. The department proposes to remove Quality Assurance Division to its current title of Office of Inspector General.

ARM 37.106.804
The department proposes a change to this rule to update the subchapters and subparts of the CFR reference to the current subchapters and subparts relevant to specialty hospitals. The department proposes to remove Quality Assurance Division to its current title of Office of Inspector General.

ARM 37.106.1505
The department proposes a change to this rule to update the subchapters and parts of the CFR reference to the current subchapters and subparts relevant to home health agencies. The department proposes to remove Quality Assurance Division to its current title of Office of Inspector General.

ARM 37.106.2311
The department proposes a change to this rule to update the adherence to the NFPA to the current edition.

ARM 37.106.1101, 37.106.1103, 37.106.1104, 37.106.1105, 37.106.1110, 37.106.1111, 37.106.1112, 37.106.1120, 37.106.1121, 37.106.11.22, 37.106.1123, 37.106.1124, 37.106.1130, 37.106.1131, and 37.106.1132
The department proposes to repeal these rules as this facility type is no longer utilized. This facility type existed prior to the creation of Critical Access Hospitals (CAHs), and no longer would be available for licensure as they would meet the criteria for CAHs.

Fiscal Impact

There is no fiscal impact to providers with these changes: Referencing the same CFR but a different section does not cost a facility money. Updating references to

the Office of Inspector General has no impact on facilities. Repealing rules for facilities that there are currently none of has no impact. Repealing staffing ratio requirements for Nursing Facilities has no negative impact but may result in financial gain. The updated 2018 AIA Guideline manual may result in cost if a facility desires to obtain a copy of the manual; however, this is more commonly acquired by hired architects and construction consultants.

6. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ FLINT MURFITT
Flint Murfitt
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.95.102, 37.95.140, 37.95.160, 37.95.184, 37.95.622, 37.95.703, 37.95.704, and 37.95.1130 pertaining to immunization requirements and exemptions for children and staff at child care facilities	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2022, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89227115511?pwd=VXZ5aE9MbjBGc2lqQ3dBcTlrd1Y2QT09, Meeting ID: 892 2711 5511, and Password: 361381; or

(b) Dial by Telephone: +1 646 558 8656, Meeting ID: 892 2711 5511, and Password: 361381.

Find your local number: https://mt-gov.zoom.us/u/kcA1RxKVcx.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.95.102 DEFINITIONS (1) "ACIP" means the Advisory Committee on Immunization Practices, ~~of the U.S. Public Health Service~~ which provides advice to the U.S. Centers for Disease Control and Prevention on routine administration of vaccines to pediatric and adult populations.

(2) remains the same.

(3) "Child care center" is the same as "Day-care center," as defined in 52-2-703, MCA.

(4) "Child care facility" is the same as "Day-care facility," as defined in 52-2-703, MCA.

(5) "Conditional attendance" means that children are allowed to attend child care on a conditional basis until they meet the requirements of an established vaccination schedule.

(6) "Conditional Attendance Form (HES 103)" means the form used by parents or guardians and a physician, physician's designee, or school or public health official to allow children to attend child care on a conditional basis until the children meet the requirements of an established vaccination schedule.

(7) "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988.

(5) through (9) remain the same, but are renumbered (8) through (12).

~~(10)~~(13) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids ~~for pediatric use~~.

(11) through (13) remain the same, but are renumbered (14) through (16).

~~(14)~~(17) "Early childhood teacher (ECT)" or "teacher" means a facility staff member who is responsible for the direct care, teaching, and supervision of children in a day care or child care facility. This term includes directors, substitutes, ECATs, and ECLTs.

(15) remains the same, but is renumbered (18).

~~(16)~~(19) "Family child care facility" is the same as a "Family day care home," as defined in 52-2-703, MCA. The department may refer to a family day-care home as a family child care home. ~~In addition to the previous definitional language found at 52-2-703, MCA, the~~ The term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under age two, a family child care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.

(17) remains the same, but is renumbered (20).

~~(18)~~(21) "Group child care facility" is the same as "Group ~~day-care~~ day care home," as defined in 52-2-703, MCA.

(19) and (20) remain the same, but are renumbered (22) and (23).

~~(21)~~(24) "Health care provider" means a licensed physician, a physician assistant~~-certified~~, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of ~~the license~~ licensing.

(22) through (26) remain the same, but are renumbered (25) through (29).

(30) "Medical exemption" means a vaccination exemption from a health care provider indicating that the physical condition of the child is such that one or more vaccinations would endanger life, health, or is medically contraindicated.

(31) "Medical Exemption Statement Form (HES 101A)" means the form provided by the department to establish medical exemption from vaccinations.

(27) remains the same, but is renumbered (32).

(33) "Montana Certificate of Immunization Form (HES 101)" means the form provided by the department to consolidate immunization history.

(28) and (29) remain the same, but are renumbered (34) and (35).

(36) "MR vaccine" means a vaccine containing a combination of measles and rubella vaccines.

(30) remains the same, but is renumbered (37).

~~(31)~~(38) "Nonprescription medication" means any over the counter medication that is not specifically prescribed by a ~~physician~~ health care provider, but is recommended by a health care provider ~~or a~~, parent, or guardian for a specific child.

(39) "Official immunization record" means a standard electronic or paper record maintained by the department, another state's principal health agency, or a health care provider to record the immunization status of a child, and includes the following:

(a) child's legal name;

(b) birthdate;

(c) sex; and

(d) vaccination date (month, day, and year) by vaccine type, or in the case of a postsecondary record, the month and year of vaccine administration.

(32) through (34) remain the same, but are renumbered (40) through (42).

(43) "Polio vaccine" means a trivalent polio vaccine.

(35) through (38) remain the same, but are renumbered (44) through (47).

~~(39)~~(48) "Probationary license" means a day care facility license or registration certificate whose status has been reduced for a specified period of time for a licensing violation and ~~which~~ will be reinstated to regular status upon successful completion of and compliance with remedial measures identified by the department to address specific deficiencies.

~~(40)~~(49) "Provider" means the applicant for license or registration, or the licensee or registrant.

~~(41)~~ (50) "Provisional certificate" means a registration or license status that is given to a day care provider~~,~~ if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for ~~a period of~~ up to three months. A second three month certificate may be issued at the discretion of the day care licensing program manager.

(42) and (43) remain the same, but are renumbered (51) and (52).

~~(44)~~(53) "Regular certificate" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, ~~or~~ group day care homes, or day care centers.

(45) remains the same, but is renumbered (54).

(55) "Religious exemption" means a vaccination exemption based on an affidavit of exemption on religious grounds attesting that receipt of a vaccine or vaccines is contrary to an individual's religious belief, observance, or practice.

(56) "Religious exemption form" means a notarized affidavit of exemption on religious grounds from vaccine administration.

~~(46)~~(57) "Remote means of egress" means escape routes in the day care which consist of two exits whose distance apart is equal to or greater than one-half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.

(47) through (55) remain the same, but are renumbered (58) through (66).

(67) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids.

(68) "Tdap vaccine" means a vaccine containing tetanus and diphtheria toxoids, and acellular pertussis.

(56) and (57) remain the same, but are renumbered (69) and (70).

~~(58)~~(71) "Vaccine" means one of the following:

(a) if administered in the United States, an immunizing agent recommended by ACIP and ~~approved~~ licensed by the ~~Bureau of Biologics,~~ U.S. Food and Drug Administration~~, United States Public Health Services~~; or

(b) remains the same.

~~(59)~~(72) "Varicella vaccine" means an attenuated, live virus vaccine to prevent chicken pox disease.

(60) remains the same, but is renumbered (73).

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

37.95.140 IMMUNIZATION (1) Children attending Montana child care programs are required to be vaccinated against certain diseases. The minimum number and spacing of doses are set forth in the Advisory Committee on Immunization Practices (ACIP) Child and Adolescent Immunization Schedules. Minimum child immunization requirements apply to children in all child care programs with exceptions described in (8). Before a child may attend ~~a~~ any Montana ~~day~~ child care program ~~facility~~, ~~that facility~~ the program must be provided with ~~the~~ documentation ~~required by (5)~~ that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with ~~(7)~~(8) or has a medical or religious exemption:

Age at Entry	Number of Doses-Vaccine Type
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine

	3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 2 doses of Hep B vaccine *4 doses of PCV vaccine
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 3 doses of Hep B vaccine *4 doses of PCV vaccine
By 6 years of age	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
By 12 years of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) and (3) remain the same.

(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) remains the same.

(b) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical or religious exemption ~~meeting the requirements of ARM 37.114.715 that exempt the child from pertussis vaccination~~; and

(c) remains the same.

~~(5) Immunization history must be recorded on the Montana certificate of immunization form (HES-101) provided by the department or on a physician- or clinic-provided immunization record, which must include:~~

~~(a) the name of the physician or clinic;~~

~~(b) the name and birth date of the child; and~~

~~(c) the date and type of immunization.~~

(5) The following are considered adequate documentation of vaccination for the purposes of this subchapter:

(a) a record from any local health department in the United States, signed by a local health officer or nurse;

(b) a certificate signed by a local health officer or nurse;

(c) any official immunization record, if information has been recorded and signed by a physician, physician's designee, local health officer, or that officer's designee; or an official report from the statewide immunization information system, or a health care provider's medical record system;

(d) immunization recorded on a form approved by the U.S. government;

(e) any state's official parent-maintained immunization record;

(f) the international certificates of vaccination approved by the World Health Organization; or

(g) in the case of a vaccine administrated outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.

(6) Vaccine administration data may not be filled out by a parent, guardian, or other person unless they are a health care provider, health department official, or person otherwise authorized to do so by this subchapter.

~~(6)~~(7) In order to continue to attend a ~~day~~ child care program ~~facility~~, a child must continue to be immunized on the schedule described in (1) and must be immediately excluded from attendance ~~in the day care facility~~ if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the ~~day~~ child care program ~~facility~~ a record of medical exemption, religious exemption, ~~or~~ a conditional enrollment form which indicates that no vaccine dose is past due, or meet the exemption for a child experiencing homelessness or a child in the foster care system.

~~(7)~~(8) A child may ~~initially~~ conditionally attend a ~~day~~ child care program ~~facility~~ if:

(a) remains the same.

(b) ~~a form~~ documentation ~~prescribed by the department documenting~~ of the child's conditional immunization status is on file at the ~~day~~ child care program ~~facility and is attached to the department's Montana certificate of immunization (HES-101)~~; and

(c) remains the same.

~~(8) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member, or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility~~

~~until the local health authority indicates to the day care facility that the outbreak is over.~~

(9) The following are considered completed immunization documentation in lieu of receiving required vaccines:

(a) the conditional enrollment form prescribed by the department;

(b) a medical exemption;

(c) a religious exemption; or

(d) documentation of immunity from varicella, measles, mumps, or rubella by laboratory evidence or diagnosis/verification of disease by a physician, nurse practitioner, or physician's assistant. The tests must indicate serological evidence of immunity and must be performed by a CLIA-certified laboratory. A copy of the test results must be attached to the child's official immunization record.

~~(9)~~(10) All child care programs must have completed immunization documentation, in accordance with (9), on file before a child can be enrolled or entered into a child care program. The ~~day~~ child care program ~~facility~~ must maintain a ~~written~~ record of immunization status ~~of each staff member,~~ for each enrolled child~~,~~ and ~~each~~ any child ~~of a staff member~~ who resides at the ~~day~~ child care program ~~facility~~ as limited to child immunizations under this rule's vaccine schedule. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

~~(10) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement. A claim of exemption on religious grounds must be notarized and maintained on an Affidavit of Exemption on Religious Grounds form (HES-113) provided by the department.~~

(11) A child is exempt from receiving the required vaccinations when the requirements of any of the following are met:

(a) Medical exemption: A child is not required to have any ~~immunizations~~ vaccinations which are medically contraindicated. A written and signed statement from a ~~physician~~ health care provider that ~~an immunization~~ a vaccination otherwise required by (1) of this rule is medically contraindicated will exempt a child from those ~~immunization~~ vaccination requirements as deemed necessary by the ~~physician~~ health care provider. It is preferred, but not mandatory, that a ~~physician's~~ health care provider's medical exemption be recorded on HES-101A. Medical exemption documentation must include:

~~(a)~~(i) which specific ~~immunization~~ vaccination is contraindicated;

~~(b)~~(ii) the period of time during which the ~~immunization~~ vaccination is contraindicated;

(c) remains the same, but is renumbered (iii).

~~(d)~~(iv) when deemed necessary by a ~~physician~~ health care provider, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

(b) Religious exemption: A child seeking to attend a child care program is not required to be vaccinated if the child's parent or guardian attests that vaccination is contrary to their religious belief, observance, or practice. An exemption on

religious grounds must be notarized and maintained on an Affidavit of Exemption on Religious Grounds Form (HES-113) prescribed by the department.

(i) Prior to a child's kindergarten entry, and at each interval in the ACIP birth-18 years immunization schedule at which vaccinations are due, an Affidavit of Exemption on Religious Grounds Form (HES-113) must be submitted if the child seeks exemption from any vaccine(s) due at such intervals. The documentation is required only for the required vaccines listed in (1).

~~(12)~~(c) A child experiencing homelessness or a child in foster care is exempt from required ~~immunizations~~ vaccinations outlined in (1) for a 30-day grace period beginning the first day the child attends a child care ~~facility~~ program as verified on the sign-in/sign-out records.

~~(a)~~(i) The child experiencing homelessness must meet the definition in ~~Section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. 11434a) (98.2)~~ 42 U.S.C. 11434a(2).

(b) remains the same, but is renumbered (ii).

~~(c)~~(iii) A child must meet the ~~immunization~~ vaccination requirement for conditional enrollment ~~outlined in (7)~~ before the end of the 30-day period.

(d) remains the same, but is renumbered (iv).

(12) Children in a sibling group receiving FFN care in their home are not subject to the immunization requirements.

(13) Children receiving care through relative care exempt providers are not subject to vaccination requirements.

(14) Family child care programs, group child care programs, and FFN caregivers may choose whether to enroll children who are not vaccinated according to the minimum immunization schedule included in (1) because of a medical or religious exemption. These providers must have written policies and procedures to notify parents and legal guardians of prospective and enrolled children of this choice.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

37.95.160 CHILD CARE FACILITIES: STAFF RECORDS (1) The director must maintain records regarding each staff member, according to their role type, which include:

(a) and (b) remain the same.

(c) health statement and contact information; and

~~(d) immunization records that establish compliance with ARM 37.95.184; and~~

~~(e)~~(d) ~~acknowledgement~~ acknowledgment of and agreement to follow the child care facility's policy on identifying and preventing shaken baby syndrome and abusive head trauma.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-732, MCA

37.95.184 CHILD CARE FACILITIES: HEALTH HABITS (1) remains the same.

(2) Every employee, volunteer, or resident at a day care facility must:

(a) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101°F or greater, or if the person exhibits any of the symptoms outlined in ARM 37.95.139~~(4)~~(3) for which a child would be excluded;

(b) through (b)(vi) remain the same.

(vii) after engaging in other activities that contaminate the hands~~; and~~.

~~(c) provide documentation of at least one dose of Tdap vaccine, and for all adults born in 1957 or after, one dose of MMR vaccine unless they have a medical contraindication to the vaccines or laboratory evidence of immunity to each of the three diseases.~~

(3) remains the same.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATIONS (1) All staff members must:

~~(a) meet immunization requirements pursuant to ARM 37.95.184;~~

(b) and (c) remain the same, but are renumbered (a) and (b).

(2) An early childhood lead teacher must meet the following requirements:

(a) and (b) remain the same.

(c) be current on the Montana ECP Practitioner Registry;

(d) through (f)(i) remain the same.

(ii) level 2 or higher on the Montana ECP Practitioner Registry.

(3) through (5) remain the same.

(6) Only directors, early childhood lead teachers, assistant teachers, trainees, and substitute teachers may provide direct care.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY CHILD CARE FACILITIES: DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS (1) remains the same.

(2) The director must meet the following requirements:

(a) remains the same.

~~(b) be immunized pursuant to ARM 37.95.160;~~

(c) through (h) remain the same, but are renumbered (b) through (g).

(3) In the absence of the director, a staff member must be designated to oversee the operation of the facility. The director or designee must be in charge and physically available while children are present, and must ensure there are sufficient, qualified, and approved staff so that the care, wellbeing, health, and safety needs of children are met at all times.

(4) and (5) remain the same.

(6) The director or designee must review every incident or accident causing injury to a child resulting in medical or dental care~~,~~ and document the appropriate corrective action taken to avoid a reoccurrence.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.704 GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES (1) All staff members and adult household members must:

~~(a) meet immunization requirements pursuant to ARM 37.95.160;~~

(b) and (c) remain the same, but are renumbered (a) and (b).

(2) Directors and early childhood teachers must:

(a) and (b) remain the same.

(c) be current on the Montana ECP Practitioner Registry;

(d) through (5) remain the same.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.1130 EMERGENCY CARDS AND HEALTH HISTORY FORMS

(1) remains the same.

~~(2) If the center allows enrollment of children without medical verification of immunization status, then the center must post notification of such in a place that is easily visible to parents and legal guardians.~~

~~(3) If the center does not allow enrollment of children without medical verification of immunization status, and the parent or legal guardian does not have verification of the child's immunization status, then the parent or legal guardian shall indicate in writing that to the best of the parent's or legal guardian's knowledge and belief, the child is up to date with the schedule of immunizations for the child's age. This acknowledgement may suffice as verification of immunization status.~~

(4) remains the same, but is renumbered (2).

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) has taken a proactive approach to reviewing child care licensing rules; over the course of four months, 780 child care stakeholders were contacted. Based on the input provided by these stakeholders, the department intends to simplify licensing regulations and reduce the burden imposed by these regulations. This rulemaking is the first installment of a comprehensive rule revision.

The department proposes to amend ARM 37.95.102, 37.95.140, and 37.95.1130 to comply with House Bill (HB) 702 and Senate Bill (SB) 215 from the 2021 Montana Legislative session, to align with school immunization policy, and to add a religious exemption for a child in a child care program.

HB 702 excludes, from the bar on discrimination based on vaccination status, vaccination requirements set forth for day care facilities pursuant to Title 52, chapter 2, part 7, MCA (Montana Child Care Act). No rule changes are required as a result of HB 702 as they relate to required vaccinations for children and staff. SB 215, the Montana Religious Freedom Restoration Act (Montana RFRA), prohibits state action that substantially burdens a person's exercise of religion, unless the action is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. Many religiously observant families object to certain childhood vaccines on religious grounds. To comply with SB 215, the department proposes adding a religious exemption for children attending child care.

The department proposes to amend ARM 37.95.160, 37.95.184, 37.95.622, 37.95.703, and 37.95.704 to remove staff vaccination requirements and align with vaccination requirements for staff in public school settings. Minor grammatical changes are made throughout for clarity.

ARM 37.95.102

The department proposes to add missing vaccination definitions and align the terms used in Child Care Licensing with those used in ARM Title 37, chapter 114, subchapter 7: Immunization of School Children. By aligning with the terms and exemptions used in schools, it provides consistency for parents and guardians as children transition from child care facilities to school. Parents and guardians will also have exemption options that are consistent between child care facilities and school. These proposed changes will make the rule easier to understand.

ARM 37.95.140

The department proposes to update language to clarify minimum vaccination requirements and exceptions for family, friend, and neighbor (FFN) providers and relative care exempt (RCE) providers. The department proposes to revise language to align with ARM Title 37, chapter 114, subchapter 7: Immunization of School Children and the proposed changes to ARM 37.95.102.

The department proposes to update its regulatory provisions on vaccine exemptions. The department proposes to add a religious exemption for all vaccines. These changes will bring the rule into compliance with SB 215. It also proposes to clarify the requirements and applicability of medical exemptions. The department prefers using the medical exemption form, HES-101A.

The department proposes to align document requirements with ARM 37.114.703: Requirements for Adequate Documentation of Immunization Status, which applies to immunization of school children. The department believes these changes are necessary to simplify documentation requirements for parents and guardians because the same document could be used when a child who is in child care transitions into a school setting.

The department proposes to clarify that vaccine records for children at a child care program are limited to child immunizations under the vaccine schedule listed in ARM 37.95.140(1). There are no additional vaccine requirements for a child care program outside of the vaccines listed in (1). This provides clarity as to the minimum requirements for children attending child care and allows for parental choice in any additional vaccines.

The department proposes adding language that a home-based child care provider must have policies and procedures to inform parents and guardians if the child care provider accepts children with medical or religious exemptions from required vaccines. Home-based child care providers include FFN, family home, and group home child care facilities. A parent or guardian determines the child care setting that best suits the needs of their child(ren). If the parent or guardian is informed of the child care provider's policy, they can make the best decision for their child(ren). Child care centers were not included to ensure there are child care settings supporting parents' and guardians' needs and choices regarding vaccinations.

ARM 37.95.160, 37.95.622, 37.95.703, and 37.95.704
The department proposes to remove staff vaccination and associated record requirements. The department believes this will support streamlined staff hiring and align with vaccination requirements for staff in public school settings.

ARM 37.95.184
The department proposes to remove staff vaccination and associated record requirements. The department believes this will support streamlined staff hiring and align with vaccination requirements for staff in public school settings. The department also proposes updating the cross reference to ARM 37.95.139 for clarity.

ARM 37.95.1130
The department proposes to remove vaccination requirements to align with proposed changes in ARM 37.95.140. A parent or guardian of a child enrolled at a licensed child care center can submit the appropriate form to indicate that child is entitled to a medical or religious exemption to a vaccine. The department intends to allow the same option to a child attending a drop-in child care center.

Fiscal Impact

The department does not anticipate any fiscal impact associated with these proposed rule amendments.

5. The department intends to adopt the amendments effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, does not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.62.106 and 37.62.307 pertaining to Child Support Services Division guidelines and distribution	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2022, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/82037599075?pwd=RUV2UlNRbGFFa2JMa3ZkaXFNekFWQT09 Meeting ID: 820 3759 9075, Password: 602592; or

(b) Dial by telephone: +1 646 558 8656, Meeting ID: 820 3759 9075, Password: 602592.
Find your local number: https://mt-gov.zoom.us/u/k3YXD4sal.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>37.62.106 IMPUTED INCOME FOR CHILD SUPPORT</u> (1) and (2) remain the same.

(3) In all cases where imputed income is appropriate, the amount is based on the following:

(a) the parent's <u>residence and</u> recent work and earnings history;

(b) through (6) remain the same.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

<u>37.62.307 DISTRIBUTION OF COLLECTIONS</u> (1) Except as provided in (2) and (6), collections of support from all sources<u>,</u> including but not limited to the

proceeds from writs of execution, support liens, state tax offsets, and lump sum settlements, will be distributed, to the extent the collection is sufficient, in the following sequence:

(a) remains the same.

(b) to satisfy any arrears owed to the obligee, except when the obligee is a recipient of public assistance, including IV-E foster care services. When the obligee is a public assistance recipient, or if no arrears are owed to the obligee, collections in excess of current support shall first be applied to arrears owed to the state of Montana under 40-5-202, ~~50-5-221~~ 40-5-221, and 53-2-613, MCA, before any funds are distributed to the obligee.

(c) through (5) remain the same.

(6) Support collections resulting from federal tax offsets will be distributed only to those arrears certified to the tax authorities as past due. These collections shall be distributed, to the extent they are sufficient, first to satisfy any arrears owing to the state of Montana under 40-5-202, 40-5-221, and 53-2-613, MCA. If there is no past due support owed to the state of Montana, or ~~if~~ to the extent the collection exceeds the amount owed to the state of Montana, the collection shall be distributed to arrears owed to the obligee. If arrears are owed in more than one case, the collection shall be distributed equally among the obligor's cases, provided that the amount distributed shall not exceed the arrears owed.

(7) through (11) remain the same.

AUTH: 40-5-202, MCA
IMP: 17-4-105, 40-5-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The proposed amendments are explained below, with reference to the specific subsections of ARM 37.62.106 and 37.62.307.

ARM 37.62.106(3)(a)

The department proposes to require tribunals to consider a parent's residence when imputing income for child support to more fully align with 42 CFR 302.56(c)(1)(iii). This amendment was requested by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement (OCSE). Federal regulations require states to consider residence for calculation of support obligations. This affects the amount of income which may be imputed. The value of a residence may also indicate that a parent's earning capacity or actual earnings does not match with their stated income. The change is necessary to align with OCSE requirements and federal rules.

ARM 37.62.307(1)(b) and (6)

The department proposes to amend the rule to include a correct citation to the Montana Code Annotated. This rule currently cites an incorrect statute which has

been repealed. The citation should be 40-5-221, MCA, instead of 50-5-221, MCA. The change is necessary to provide accurate legal authority for the existing rule.

Section (6) includes an insertion of the phrase "to the extent," for purposes of clarity, as well as a minor grammatical change from "obligor" to "obligor's."

Fiscal Impact

No fiscal impact is expected from these changes.

5. These amendments will be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ CHAD G. PARKER
Chad G. Parker
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.70.601, 37.70.607, and 37.70.608 pertaining to low income home energy assistance program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 26, 2022, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81593946717?pwd=V2hLZytic3pnMmhYdDQyc2xqZXlhdz09, Meeting ID: 815 9394 6717, and Password: 389910.

(b) Dial by Telephone: +1 646 558 8656, Meeting ID: 815 9394 6717, and Password: 389910.

Find your local number: https://mt-gov.zoom.us/u/ksvoSVrc8

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 12, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.70.601 BENEFIT AWARD (1) The department adopts and incorporates by reference the department's ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers, for the ~~2021-2022~~ 2022-2023 heating season. The ~~LIEAP~~ LIHEAP Benefit Award Matrix is located ~~at the department's web site~~ at ~~http://www.dphhs.mt.gov/hcsd/energyassistance.aspx~~ https://dphhs.mt.gov/hcsd/energyassistance/ or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, 1400 Carter Drive, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season. The 2021-2022 benefit matrix will be used for the 2021-2022 heating season, and the 2022-2023 benefit matrix will be used for the 2022-2023 heating season. The benefit varies by:

(a) through (g) remain the same.

(2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in the ~~LIEAP~~ LIHEAP Benefit Award Matrix ~~for the 2021-2022 heating season~~ by the applicable matrix amount in the table of income/climatic adjustment multipliers found in the ~~LIEAP~~ LIHEAP Benefit Award Matrix ~~for the 2021-2022 heating season~~.

~~(3) Households may claim no more bedrooms than household members except that single elderly and disabled individual households are entitled to claim two bedrooms if their dwelling unit contains more than one bedroom~~

~~(4)~~(3) Publicly subsidized households whose energy costs are included as a fixed portion of their rent, or who reside in publicly subsidized housing and have an out-of-pocket obligation to pay a base-load electric bill, are not eligible for a regular ~~LIEAP~~ LIHEAP benefit computed using the benefit matrices and multipliers in the ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers ~~for the 2021-2022 heating season~~. However, these households may be eligible for a modified ~~LIEAP~~ LIHEAP benefit. The modified ~~LIEAP~~ LIHEAP benefit is equal to five percent of the ~~amount of a~~ regular ~~LIEAP~~ LIHEAP benefit computed using the benefit matrices and multipliers in the ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers ~~for the 2021-2022 heating season,~~ or a minimum payment of $25, whichever is greater, ~~would be~~ paid ~~to the household~~ annually. Households determined eligible for the modified ~~LIEAP~~ LIHEAP benefit whose economic and housing situation does not change ~~would be determined~~ are eligible for a period of five years.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households ~~that are~~ directly billed for energy costs ~~directly~~ by the fuel vendor will be paid a benefit ~~in the~~ amount computed using the benefit matrices and multipliers in the Low Income Home Energy Assistance Program ~~LIEAP~~ (LIHEAP) Benefit Award Matrix and Table of Multipliers ~~for the 2021-2022 heating season~~ and will be paid as follows:

(a) remains the same.

(b) The amount of the benefit or adjusted award remaining after the application of (1)(a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance in excess of $50 attributable to the benefit or adjusted award after the end of the heating season must be returned to the department. For the 2021-2022 and 2022-2023 heating seasons only, any LIHEAP attributable credit balance in excess of $500 must be returned to the department no later than August 31, 2023.

(c) Application for benefits for the current heating season will not be processed until the credit balances for each of the household's fuel vendors attributable to previous years' program awards total $50 or less. This does not apply if the department has extended the heating season and has allowed LIHEAP attributable credit balances to remain on the recipients' accounts until spent.

(d) remains the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a household member ~~of the household~~ will be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season does not exceed the benefit amount computed using the benefit matrices and multipliers in the ~~LIEAP~~ LIHEAP Benefit Award Matrix and Table of Multipliers ~~for the 2021-2022 heating season~~. Reimbursement will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 20 or the end of the heating season, whichever is later.

(3) For eligible households that have their energy costs included in their rental payments:

(a) The household will be paid a benefit computed ~~on a~~ monthly ~~basis~~. For each month of the current heating season for which the household provides a paid rent receipt, the household will be reimbursed a ~~pro rata~~ prorated portion, determined by dividing one by the number of months in the heating season, of the benefit amount provided in ARM 37.70.601~~;~~. ~~provided, however~~ However, ~~that~~ the benefit paid to the household for any month must not exceed 50 percent of the rent paid for that month as evidenced by the rent receipt. Failure to provide rent receipts to the local contractor by June 20 or the end of the heating season, whichever is later, will result in the forfeiture of any benefits to which the household would otherwise be entitled.

(b) remains the same.

(4) Benefits for eligible households using wood to heat their dwelling will be paid as follows:

(a) remains the same.

(b) at the option of the local contractor, by payment directly to the household for future purchases of wood~~;~~. ~~provided, however, that households~~ Households which receive a direct payment will not be entitled to any additional benefits for the current heating season which the household might otherwise be entitled to receive due to ~~a move~~ moving to a different dwelling or other change in circumstances, except in an emergency as defined in ARM 37.70.901; or

(c) when the household provides receipts to verify that the household has purchased wood between July 1 and the end of the heating season of the current state fiscal year, by a payment directly to the household reimbursing the household for wood already purchased. Households which are reimbursed ~~by a direct payment~~ based on paid receipts do not lose their right to additional benefits for the current heating season as provided in (4)(b). Failure to provide receipts verifying wood purchases to the local contractor by June 20 or the end of the heating season, whichever is later, will result in the forfeiture of any benefits to which the household would otherwise be entitled.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

37.70.608 ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS

(1) When funds are not available to serve all eligible households, the department may, at its option, take any or all of the following steps ~~as needed~~:

(a) remains the same.

(b) limit eligibility to only financially needy households with a member 60 years of age or older, or with a member who is disabled and receiving supplemental security income or social security income based on permanent and total disability; or

(c) remains the same.

(2) If additional funds become available to serve eligible households, the department may, at its option, take any or all of the following steps ~~as needed~~:

(a) remains the same.

(b) extend the duration of the current heating season beyond April 30; ~~or~~

(c) increase the maximum income standards for eligibility, if permitted by federal law~~.~~;

(d) allow LIHEAP attributable credit balances to remain on the recipients' accounts through the end of the 2022-2023 heating season. Any credit LIHEAP attributable credit balance in excess of $500 needs to be returned to the department by August 31, 2023; or

(e) extend the deadline to submit paid receipts to correspond with the end of the heating season.

AUTH: 53-2-201, MCA
IMP: 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes amending ARM 37.70.601, 37.70.607, and 37.70.608 pertaining to Low Income Home Energy Assistance Program (LIHEAP). LIHEAP is a federally funded program to help low income households pay their home heating costs. The department proposes the following changes to its administrative rules governing LIHEAP.

ARM 37.70.601 and 37.70.607

The department proposes changing all references to Low Income Energy Assistance Program (LIEAP) to Low Income Home Energy Assistance Program (LIHEAP). This change is necessary to reflect the change in program name.

ARM 37.70.601

The program proposes changing the LIHEAP benefit calculation to be based on the number of bedrooms and not household members. The reasoning for this is that it costs more to heat a 5-bedroom home than a 2-bedroom home. Since this is a "heating" program, the benefit needs to correlate with the size of the home, not the number of people in the home. This change is necessary to ensure the LIHEAP benefit is calculated based on the size of the home not the number of household members.

An updated URL for the department's website is provided.

The Intergovernmental Human Services Bureau name and physical address are added to the contact information. These changes notify the public of where they can obtain the information produced and relied upon by the department.

ARM 37.70.601, 37.70.607(1) and 37.70.607(2)

The department proposes amending these rules to provide an updated LIHEAP Benefit Award Matrix for use during the 2022-2023 heating season. ARM 37.70.607 provides that, in most cases, an eligible household benefit is computed by multiplying the applicable base benefit amount by the applicable income/climatic adjustment multiplier. Both of these factors can be found in the LIHEAP Benefit Award Matrix. The amounts in the table of base benefits vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding, fuel costs, and the number of households expected to receive benefits in a given heating season, all of which change from year to year. The amounts in the benefit tables in the LIHEAP Benefit Award Matrix for 2021-2022 have been revised based on estimates of the amount of funds available to pay LIHEAP benefits for the 2022-2023 heating season, the estimated number of households that will apply and be found eligible for LIHEAP for the 2022-2023 heating season, and fuel cost projections for the 2022-2023 heating season. If the amounts in the benefit tables are not updated for the 2022-2023 heating season, the benefits paid out for the heating season might exceed available funding or a large amount of funds that could help low income households heat their homes might go unspent. The 2021-2022 LIHEAP benefit award matrix will be used for the 2021-2022 heating season, and the 2022-2023 benefit award matrix will be used for the 2022-2023 heating season.

ARM 37.70.607(1)(c)

The department intends to clarify the rule to allow LIHEAP attributable credit balances to remain on the recipient's accounts until spent when the department extends the heating season. This change allows the department to continue to meet the heating needs of low-income Montanans in years when additional funds are available.

ARM 37.70.607(1)(b) and ARM 37.70.608(2)(d)

To address the influx of American Rescue Plan Act (ARPA) funds and the use of these funds, the department proposes increasing the amount of LIHEAP attributable credit balances that can remain on a recipients' fuel accounts from $50 to $500. This change only applies to the 2021-2022 and 2022-2023 heating seasons. Any credit balance more than $500 attributable to the benefit or adjusted award after the end of the heating season must be returned to the department. This change will allow LIHEAP recipients more time to utilize the LIHEAP benefits paid during the 2021-2022 and 2022-2023 heating seasons. It will also reduce the amount of administrative strain on fuel vendors.

ARM 37.70.607(2), (3)(a), (4)(c) and 37.70.608(2)(e)

The department proposes changing the deadline from June 20 to the end of the heating season to submit paid receipts for reimbursement. This change will provide a clear deadline for submission of receipts for reimbursement and ensure recipients who are reimbursed based on paid receipts are treated the same as other LIHEAP recipients.

Fiscal Impact

LIHEAP is 100 percent federally funded. Congress has not yet appropriated funds for the LIHEAP 2022-2023 heating season. However, based upon the information available at this time, the department estimates Montana will receive funding comparable to last heating season. Benefit levels for households using all types of heating fuel and for all dwelling types are expected to be comparable to the 2021-2022 heating season. It is estimated that 18,000 households will qualify for LIHEAP benefits this year, which is comparable to last year. As in past years, if LIHEAP funds for the 2022-2023 heating season are appropriated at a higher level, the additional funding will allow subsequent payments to be issued to each LIHEAP recipient. The department does not anticipate any significant fiscal impact.

5. The department intends for the proposed amendments to be effective retroactively to October 1, 2021.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 37.110.401, 37.110.402, 37.110.405, 37.110.406, 37.110.407, 37.110.410, 37.110.411, 37.110.412, 37.110.413, 37.110.414, 37.110.420, 37.110.421, 37.110.422, 37.110.427, 37.110.428, and 37.110.429 pertaining to vending of food and beverages	)	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to repeal the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department proposes to repeal the following rules:

37.110.401 DEFINITIONS

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.402 SAMPLING, HEARING, DISPOSAL

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.405 FOOD, BEVERAGE AND INGREDIENT REQUIREMENTS: GENERAL

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.406 PERISHABLES

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.407 MILK AND MILK PRODUCTS

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.410 NONPERISHABLE FOOD MACHINES

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.411 SINGLE-SERVICE CONTAINERS

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.412 MACHINE LOCATION

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.413 MACHINE CONSTRUCTION: EXTERIOR

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.414 MACHINE CONSTRUCTION: INTERIOR

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.420 WATER SUPPLY

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.421 WASTE DISPOSAL

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.422 TRANSPORTATION

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.427 EMPLOYEE REQUIREMENTS

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.428 INSPECTIONS

AUTH: 50-50-103, 50-50-305, MCA
IMP: 50-50-301, 50-50-302, 50-50-305 MCA

37.110.429 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES

AUTH: 50-50-305, MCA
IMP: 50-50-305, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to repeal the above-referenced rules pertaining to food and beverage vending. These rules have not been significantly updated since 1972. Since that time, the department has adopted separate regulations governing retail food establishments. See ARM Title 37, chapter 110, subchapter 2. Under the retail food establishment rules, the sale of perishable food through a vending machine is a retail transaction and requires a retail food license. The retail food rules also address the safe preparation and storage of food, including food sold or dispensed through vending machines. The department is proposing to repeal the vending machine rules because they are outdated and unnecessary given the requirements contained under the retail food rules.

Fiscal Impact

The department anticipates no fiscal impact regarding the proposed rulemaking.

5. The department intends to repeal these rules effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kassie Thompson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 2, 2022. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kassie Thompson at the above address no later than 5:00 p.m., September 2, 2022.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 769 persons based on the 7,696 licensed retail food establishments in Montana.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.10.101, 37.10.104, 37.10.105, and 37.10.108 pertaining to living wills	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 26, 2022, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85636050552?pwd=YUk1T2Y1bENQUmNHVGpPdk5KcnlaQT09, Meeting ID: 856 3605 0552, and Password: 392150; or

(b) Dial by telephone +1 646 558 8656, Meeting ID: 856 3605 0552, and Password: 392150. Find your local number: https://mt-gov.zoom.us/u/kejaLr2W21.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 12, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.10.101 DEFINITIONS ~~(1) "Comfort One" means a statewide method withholding resuscitative measures for terminally ill patients for whom a physician has issued a do-not-resuscitate order (DNR) order. The Comfort One program is to be succeeded by "POLST".~~

~~(2) "Comfort One card or form" means a uniform statewide identification card or form, issued before January 1, 2010, indicating that a DNR has been issued to the patient.~~

~~(3) "Comfort One logo" means a standard, statewide graphic display, including the words "comfort one", approved by the department.~~

~~(4) "Comfort One necklace or bracelet" means a necklace or bracelet of uniform statewide design, approved by the department. The Comfort One necklace or bracelet must prominently display the Comfort One logo and may only be issued~~

~~to patients on verification that they have a Comfort One form, or have been identified as DNR patients on the POLST form.~~

~~(5)~~(1) "POLST" means Provider Orders for Life-Sustaining Treatment, a comprehensive statewide method of identifying a patient's wishes for providing palliative care, medical interventions, or withholding resuscitative measures to terminally ill patients who have ~~declared living wills~~ a declaration governing the withholding or withdrawal of life-sustaining treatment or for whom a do-not-resuscitate (DNR) order has been issued pursuant to 50-10-101, et seq., MCA.

~~(6)~~(2) "POLST form" means a uniform, single form for statewide use, approved by the department and Board of Medical Examiners, indicating either that a valid and current declaration pursuant to 50-9-103, MCA, has been executed and that the declarant is a qualified patient as defined in 50-9-102, MCA, or that a provider has issued a DNR order for the patient pursuant to 50-10-101, et seq., MCA.

(7) remains the same, but is renumbered (3).

AUTH: 50-9-110, MCA
IMP: 50-9-102, 50-9-106, MCA

37.10.104 LIVING WILL PROTOCOL FOR EMS PERSONNEL (1) remains the same.

(2) For a patient who has completed a POLST ~~or Comfort One~~ form, emergency medical services personnel must follow the POLST protocol for providing palliative care or withholding life-sustaining procedures from a patient if a patient meets the following criteria:

(a) The identity of the patient has been clearly established and the personnel have been presented with any one of the following:

(i) a POLST form for the patient; or

~~(ii) a Comfort One card or form for the patient; or~~

(iii) remains the same, but is renumbered (ii).

(b) An unresponsive person is wearing a ~~Comfort One~~ POLST necklace or bracelet (no further identification is necessary).

AUTH: 50-9-110, MCA
IMP: 50-9-102, 50-9-103, MCA

37.10.105 SOURCES OF POLST ~~AND COMFORT ONE~~ IDENTIFICATION

(1) POLST forms, ~~Comfort One forms,~~ cards, necklaces, and bracelets may be obtained only through:

(a) through (g) remain the same.

AUTH: 50-9-110, MCA
IMP: 50-9-102, MCA

37.10.108 DO-NOT-RESUSCITATE PROTOCOL (1) POLST is ~~intended to replace Comfort One as~~ the system used by medical professionals to identify and administer appropriate care, including DNR orders, to terminally ill patients.

(2) When issuing a DNR order for a patient with a terminal condition, medical professionals are encouraged to use the POLST form and follow the DNR/POLST protocol approved by the Board of Medical Examiners and the department. The department adopts and incorporates by reference the ~~DNR/POLST~~ Montana Provider Orders for Life-Sustaining Treatment (POLST) protocol ~~July, 2008~~ (last revised September 2019), ~~which can be found at www.mt.gov/dli/bsd/license/bsd_boards/med_board/licenses/med/polst.asp or upon request from the Montana Board of Medical Examiners, P.O. Box 200513, 301 S. Park, 4th Floor, Helena, MT 59620.~~ which is accessible at the Board of Medical Examiner's website. A copy of the POLST protocol may also be obtained by contacting the department's EMS and Trauma System Section, 1400 Broadway, Room C303A, P.O. Box 202951, Helena, MT 59620-2951, 406-444-3895.

~~(3) All previously issued Comfort One identifying material, including forms, will be considered valid by health care providers.~~

AUTH: 50-10-105, MCA
IMP: 50-10-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.10.101, 37.10.104, 37.10.105, and 37.10.108 pertaining to living wills by removing references to the COMFORT ONE system. The availability and use of COMFORT ONE no longer exists and has been replaced by the Provider Orders for Life-Sustaining Treatment (POLST) protocol. Maintaining references to COMFORT ONE is unnecessary since it has been replaced by POLST. The proposed rule amendments remove outdated language referencing the former COMFORT ONE system and clarify that the POLST protocol has fully replaced COMFORT ONE.

The department is also proposing to amend the rules to adopt and incorporate by reference the most current version of the POLST protocol. The proposed rule amendment is necessary to ensure the rules reference the current POLST protocol that has been approved by the Board of Medical Examiners.

Additionally, the department is proposing to amend ARM 37.10.101 to clarify the statutory requirements applicable to issuance of DNRs.

Fiscal Impact

There is no fiscal impact anticipated due to this rulemaking.

5. The proposed rule amendments are intended to be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services,

Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of ARM 37.89.103, 37.89.106, 37.89.112, 37.89.114, 37.89.115, 37.89.118, 37.89.119, 37.89.125, 37.89.131, 37.89.501, 37.89.503, 37.89.505, 37.89.507, 37.89.509, 37.89.521, 37.89.523, 37.89.525, 37.89.531, and 37.89.541 pertaining to crisis system restructuring	))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On August 30, 2022, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89983601796?pwd=S1o5NTNCYjNrOE1IVDhjamprMW85Zz09, Meeting ID: 899 8360 1796, and Password: 079179; or

(b) Dial by Telephone: +1 646 558 8656, Meeting ID: 899 8360 1796, and Password: 079179. Find your local number: https://mt-gov.zoom.us/u/kdZyPYrCSo

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department proposes to repeal the following rules:

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA
IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

AUTH: 41-3-1103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-6-706, 53-21-703, MCA
IMP: 41-3-1103, 52-2-603, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.112 MENTAL HEALTH SERVICES PLAN, OUTPATIENT DRUGS FOR BENEFICIARIES ELIGIBLE FOR MEDICARE

AUTH: 53-2-201, MCA
IMP: 53-21-701, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

AUTH: 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-706, 53-21-703, MCA
IMP: 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.115 MENTAL HEALTH SERVICES PLAN, PROVIDER PARTICIPATION

AUTH: 2-4-201, 41-3-1103, 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 2-4-201, 41-3-1103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.118 MENTAL HEALTH SERVICES PLAN, AUTHORIZATION REQUIREMENTS

AUTH: 53-2-201, 53-21-703, MCA
IMP: 53-2-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.119 MENTAL HEALTH SERVICES PLAN, PREMIUM PAYMENTS, AND MEMBER COPAYMENTS

AUTH: 53-2-201, 53-6-113, 53-6-131, 53-21-703, MCA
IMP: 53-1-405, 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-131, 53-21-701, 53-21-702, MCA

37.89.125 MENTAL HEALTH SERVICES PLAN, PROVIDER REIMBURSEMENT

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-2-201, 53-6-101, 53-6-116, 53-6-701, 53-6-705, 53-21-202, 53-21-702, MCA

37.89.131 MENTAL HEALTH SERVICES PLAN, MEMBER NOTICE, GRIEVANCE AND RECONSIDERATION AND RIGHTS

AUTH: 2-4-201, 53-2-201, 53-6-113, 53-6-706, 53-21-703, MCA
IMP: 2-4-201, 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-706, 53-21-202, 53-21-701, 53-21-703, MCA

37.89.501 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: DEFINITIONS

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.503 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: LIMITATIONS

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.505 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CRISIS MANAGEMENT SERVICES

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.507 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CRISIS STABILIZATION PLAN

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.509 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CLAIMS AND REIMBURSEMENT

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.521 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSABLE SERVICES

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.523 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSEMENT FOR SERVICES

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.525 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSEMENT EXCLUSIONS

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.531 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: WHERE SERVICES MAY BE PROVIDED

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.89.541 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CONFIDENTIALITY REQUIREMENTS

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

This rulemaking notice is part of the department's Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative. The HEART Initiative will establish a comprehensive continuum of care to address Montana's behavioral health needs, which include services for mental health conditions and substance use disorder treatment. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to mental health prevention, crisis intervention, treatment, and recovery services for eligible Montanans.

In this rulemaking notice, the department's Behavioral Health and Developmental Disabilities Division (BHDD) proposes to repeal all rules relating to the department's Mental Health Services Plan and the 72-Hour Presumptive Eligibility program, which are services for individuals who do not qualify for Medicaid services but whose income qualifies them for non-Medicaid mental health services paid for with state funds. Previously operated separately, the department proposes to align non-Medicaid mental health services with such services provided through the Medicaid program. By aligning the services, the state will have a unified and efficient system of mental health and crisis stabilization services for eligible Montanans, and there will be no distinction between Medicaid and non-Medicaid mental health services.

Through the HEART Initiative, BHDD can develop succinct, crisis-related programming, create administrative efficiencies, and enhance quality oversight. The object is to design a statewide, high quality mental health crisis system through Medicaid and mirror that in Montana's state funded programs.

Non-Medicaid mental health services will be aligned with Medicaid services in a rulemaking notice filed concurrently with this rule notice.

Fiscal Impact

This proposed rule amendment has no fiscal impact.

5. The proposed rule repeals are intended to be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.51.306 pertaining to foster care immunization requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 26, 2022, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84062267694?pwd=MjRJZlFGZE1KL2lzeWRrdFNWaHlyQT09, Meeting ID: 840 6226 7694, and Password: 861964; or

(b) Dial by telephone +1 646 558 8656, Meeting ID: 840 6226 7694, and Password: 861964. Find your local number: https://mt-gov.zoom.us/u/kdT8LONwi.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.51.306 YOUTH FOSTER HOMES: IMMUNIZATION REQUIREMENTS

(1) All children residing in the foster home, other than the foster child, shall be immunized against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis, tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B according to the following schedule or have a religious or medical exemption:

Total Immunizations Required, By Age

Age	Number Doses - Vaccine Type
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine

	1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 2 doses of Hep B vaccine *4 doses of PCV vaccine
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 3 doses of Hep B vaccine *4 doses of PCV vaccine
By 6 years of age	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
By 12 years of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) and (3) remain the same.

(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) remains the same.

(b) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical or religious exemption ~~meeting the requirements of ARM 37.114.715 that exempt the child from pertussis vaccination~~; and

(c) remains the same.

(5) ~~Immunization history may be recorded on the certificate of immunization form (HES-101) provided by the department or on a physician- or clinic-provided immunization record, which must include:~~ The following are considered adequate documentation of vaccination for the purposes of this subchapter:

(a) ~~the name of the physician or clinic;~~ a record from any local health department in the United States, signed by a local health officer or nurse;

(b) ~~the name and birth date of the child; and~~ a certificate signed by a local health officer or nurse;

(c) ~~the date and type of immunization.~~ any official immunization record, if information has been recorded and signed by a physician, physician's designee, local health officer, or that officer's designee; or an official report from the statewide immunization information system, or a health care provider's medical record system;

(d) immunization recorded on a form approved by the U.S. government;

(e) any state's official parent-maintained immunization record;

(f) the international certificates of vaccination approved by the World Health Organization; or

(g) in the case of vaccine administrated outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.

(6) Vaccine administration data may not be filled out by a parent, guardian, or other person unless they are a health care provider, health department official, or person otherwise authorized to do so by this subchapter.

(6) remains the same, but is renumbered (7).

~~(7)~~(8) A child residing in the foster home, other than the foster child, is not required to have any immunizations which are medically contraindicated or contrary to the religious belief, observance, or practice of the child's custodial parent or legal guardian. ~~A written and signed statement from a physician that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES-101, and medical exemption documentation must include:~~

~~(a) which specific immunization is contraindicated;~~

(a) A written and signed statement from a health care provider that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a health care provider's medical

exemption be recorded on HES-101A, and medical exemption documentation must include:

(i) which specific immunization is contraindicated;

(b) and (c) remain the same, but are renumbered (ii) and (iii)

~~(d)~~(iv) when deemed necessary by a ~~physician~~ health care provider, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved ~~lab~~ laboratory.

(b) A notarized affidavit of exemption on religious grounds attesting that receipt of a vaccine or vaccines is contrary to an individual's religious belief, observance, or practice;

(i) the religious exemption affidavit will be prepared on a form provided by the department;

(ii) the form must be provided to the department prior to licensure; and

(iii) the original claim of the religious exemption must be kept by the department in the licensing record.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-735, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.51.306.

The department's current foster care immunization requirements do not violate House Bill 702, codified at 49-2-312, MCA, because the requirements do not apply to individuals seeking licensure; instead, the requirements apply to children residing in the same house as the foster child. However, the department is concerned that its current immunization requirements, if enforced, may in certain circumstances be inconsistent with the Montana Religious Freedom Restoration Act (Montana RFRA), 27-33-105, MCA. Accordingly, the department is proposing amendments to ARM 37.51.306 to ensure the agency is in compliance with Montana RFRA. State action may not substantially burden a person's right to the exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling state interest.

ARM 37.51.306
Currently, a child residing in the foster home, other than the foster child, is not required to have any immunizations which are medically contraindicated. A written and signed statement from a health care provider that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements.

The department proposes adding a religious exemption in rule for children residing in the foster home, other than the foster child. The exemption form must be completed prior to licensure.

Fiscal Impact

This proposed rule amendment has no administrative cost in the state fiscal year. In addition, the proposed changes will result in a no cost savings.

The proposed rulemaking is estimated to affect all future prospective foster care applicants and guardianship homes.

5. These amendments will be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.82.1107 pertaining to medically needy living allowance deduction	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 29, 2022, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84583832603?pwd=TThxR0JhdmlUM2JWNWp3ajhZRkl0UT09, Meeting ID: 845 8383 2603, and Password: 153047; or

(b) Dial by Telephone: +1 646 558 8656, Meeting ID: 845 8383 2603, and Password: 153047. Find your local number: https://mt-gov.zoom.us/u/k7E1VxEJM.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.82.1107 INCOME ELIGIBILITY, NONINSTITUTIONALIZED MEDICALLY NEEDY (1) Medically needy income eligibility for ~~SSI~~ non-institutionalized and family-related persons ~~and families~~ will be computed using a one month prospective budget period.

(a) For groups covered under ARM 37.82.1101(1)(a) through (1)(e), monthly countable income will be determined using family-related Medicaid income requirements, in particular those with respect to prospective budgeting and earned income disregards, set forth in the Family Medicaid Program Policy Manual, sections 601-1 and 602-1.

(i) In the case of individuals whose income must be deemed when determining eligibility, the family-related Medicaid income requirements contained in the Family Medicaid Program Policy Manual, section 603-1 will be used.

(ii) remains the same.

(b) For groups covered under ARM 37.82.1101(4)(a) and (b), countable income will be determined using the SSI income requirements set forth in 20 CFR, part 416, subpart K, as amended through ~~April 1, 2001~~ January 1, 2022, which contains the SSI criteria for evaluating income, including the income of financially responsible relatives. The department ~~hereby~~ adopts and incorporates by reference 20 CFR, part 416, subpart K, as amended through ~~April 1, 2001~~ January 1, 2022. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Public Assistance Bureau, ~~111 N. Jackson St.~~ 1500 E. 6th Ave., P.O. Box 202925, Helena, MT 59620-2925.

(i) and (2) remain the same.

(3) When an otherwise eligible individual or family covered under ARM 37.82.1101 has countable income which exceeds the medically needy income level, the individual or family will become eligible:

(a) remains the same.

(b) after a medical expense incurment is satisfied. The incurment is equal to the difference between the countable income and the medically needy income limit for the family size, less a living allowance deduction of $269. The living allowance deduction will adjust each year with the annual Social Security Cost of Living Adjustment (COLA). Eligibility will extend to the end of the budget period. The only medical expenses which may be used to meet the incurment requirement are:

(i) through (6) remain the same.

AUTH: 53-2-201, 53-4-212, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-4-231, 53-6-101, 53-6-131, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

Adding an annual Social Security Cost of Living Adjustment (COLA) to the living allowance deduction is necessary so that Montanans can put any additional funds they receive through the COLA toward non-health care related living expenses, instead of into a higher monthly incurment to receive Medicaid coverage.

The proposal also makes a changes to the language in ARM 37.82.1107(1), updates the name of the manual referenced in ARM 37.82.1107(1)(a) and (a)(i), and updates the address at which certain materials can be obtained in ARM 37.82.1107(1)(b).

Fiscal Impact

Annually increasing the living adjustment deduction by COLA will benefit approximately 1,350 disabled and aged individuals who receive health care coverage through the medically needy program monthly. The COLA has increased approximately $15 a month each year over the last 10 years. The department estimates with increased inflation, the COLA will increase by approximately $50 in 2023 and each year thereafter. This equates to approximately $810,000 a year that these Medicaid recipients can put towards living expenses instead of an increased incurment.

5. The department intends for the proposed amendments to be effective retroactive to January 1, 2022.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New Rules I through XX, amendment of ARM 37.27.101, 37.27.102, 37.27.105, 37.27.106, 37.27.107, 37.27.115, 37.27.116, 37.27.120, 37.27.902, 37.88.101, 37.106.1411, 37.106.1413, 37.106.1415, 37.106.1420, 37.106.1425, 37.106.1430, 37.106.1432, 37.106.1435, 37.106.1440, 37.106.1450, 37.106.1452, 37.106.1454, 37.106.1460, 37.106.1470, 37.106.1475, 37.106.1480, and 37.106.1485, and repeal of ARM 37.27.108, 37.27.121, 37.27.136, 37.27.137, 37.27.138, 37.106.1401, 37.106.1462, 37.106.1482, 37.106.1487, and 37.106.1491 pertaining to state approval of substance use disorder programs, licensure of substance use disorder facilities, and the Behavioral Health and Developmental Disability Medicaid & Non-Medicaid Manuals	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 30, 2022, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/85633901312?pwd=UWhWa0loUDNzdnpVcUZPaExVRktQdz09 Meeting ID: 856 3390 1312, and Password: 043073; or

(b) Dial by telephone +1 646 558 8656, Meeting ID: 856 3390 1312, and Password: 043073. Find your local number: https://mt-gov.zoom.us/u/kcfa5N2nLG.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 16, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department

of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I STATE APPROVED PROGRAMS, SANCTIONS (1) The department, after written notice to the program, may sanction a program's state approval upon finding that the program:

(a) fails to meet any state approval requirements established by this subchapter;

(b) fails to meet regulations or licensure standards set forth in ARM Title 37, chapter 106, subchapter 14;

(c) has failed to use state or federal funds received under contract with the department or through Montana Medicaid as required, pursuant to state or federal regulations, for the operations of a program or provision of services;

(d) has failed to comply with a performance action plan approved by the department;

(e) has committed unprofessional conduct pursuant to 37-1-316, MCA;

(f) has current orders or sanctions pursuant to 37-1-312, MCA; or

(g) has current sanctions pursuant to ARM Title 37, chapter 85, subchapter 5.

(2) The department will issue a 90-day restricted state approval to a program that has failed to meet requirements of this rule and has submitted a performance action plan approved by the department.

(3) The department will issue a suspension of state approval, for up to one year, to a program that has failed to meet requirements of this rule during a restricted state approval and has submitted a performance action plan approved by the department.

(a) Programs approved under ARM 37.27.107 will receive an immediate suspension of state approval if their professional license has been suspended by the licensing board. Suspension will be the same length of time determined by the licensing board or one year, whichever is greater.

(4) The department will revoke a program's state approval if the program:

(a) has failed to meet requirements of this rule during a suspension of their state approval;

(b) has been excluded from participation in a government health care program; or

(c) approved under ARM 37.27.107, has had its professional license revoked by the licensing board.

(5) A restriction or suspension of state approval may only be issued one time within a two-year period.

(6) Any program whose state approval has been revoked under the provisions of this subchapter may not submit another application for state approval within one year from the date of revocation and all deficiencies identified in the performance action plan have been corrected.

(7) Any program whose state approval has been restricted, suspended, or revoked has the right to request a hearing as set forth in ARM Title 37, chapter 5, subchapter 3.

AUTH: 53-24-204, 53-24-207, 53-24-208, MCA
IMP: 53-24-208, MCA

NEW RULE II INDIVIDUAL OUTPATIENT TREATMENT AND PREVENTION PROVIDERS, CONFIDENTIALITY (1) Programs approved under ARM 37.27.105 and 37.27.107 providing treatment (including early intervention) must have a written client confidentiality policy pursuant to 42 CFR Part 2.

(2) The confidentiality policy must be reviewed with the client at the time of admission or as soon thereafter as the client is capable of rational communication.

(3) Policy requirements must include activities to:

(a) inform clients that federal law and regulations protect the confidentiality of alcohol and drug abuse client records; and

(b) provide clients with a summary in writing of the federal law and regulations.

(4) The written summary required in (3)(b) must include:

(a) a general description of limited circumstances under which a SUD program may acknowledge a client is present at a facility or disclose information identifying a client as an alcohol or drug abuser;

(b) a statement that violation of the federal law and regulations by a SUD program is a crime and suspected violations may be reported to appropriate authorities in accordance with these regulations;

(c) a statement that information related to a client's commission of a crime on the premises of the SUD program or against staff members of the SUD program is not protected;

(d) a statement that reports of suspected child abuse or neglect made under state law to appropriate state or local authorities are not protected; and

(e) a citation to the federal law and regulations.

(5) Client consent must be obtained for each release of information to any other person or entity if required under 42 CFR Part 2. The consent for release of information must have specific information pursuant to 42 CFR Part 2.

AUTH: 53-24-204, 53-24-207, MCA
IMP: 53-24-208, MCA

NEW RULE III INDIVIDUAL OUTPATIENT TREATMENT AND PREVENTION PROVIDERS, COMMUNICABLE DISEASE CONTROL

(1) Programs approved under ARM 37.27.105 and 37.27.107 providing treatment (including early intervention) must have a policy for communicable disease control.

(2) The communicable disease policy must be reviewed annually and include:

(a) procedures to identify high risk individuals;

(b) specific procedures to address tuberculosis (TB), Hepatitis A, Hepatitis C, sexually transmitted infections (STI), and human immunodeficiency virus (HIV); and

(c) the identification of methods used to protect, contain, or minimize the risk to clients and staff members.

(3) The program is responsible for the direction, provision, and quality of infection prevention and control services.

(4) Programs must implement TB protocols for all staff members and clients based upon an annual TB Risk assessment as set forth by the Montana Tuberculosis Prevention and Control Program pursuant to ARM Title 37, chapter 114, subchapter 10. Risk assessment and TB manuals are found at https://dphhs.mt.gov/publichealth/cdepi/diseases/Tuberculosis/.

AUTH: 53-24-204, 53-24-207, MCA
IMP: 53-24-208, MCA

NEW RULE IV INDIVIDUAL OUTPATIENT TREATMENT AND PREVENTION PROVIDERS, ABUSE OR NEGLECT REQUIREMENTS

(1) Programs approved under ARM 37.27.105 and 37.27.107 providing treatment (including early intervention) must have a policy that:

(a) clearly defines child abuse and neglect as defined in 41-3-102, MCA;

(b) clearly defines abuse, neglect, and exploitation of an older person or a person with a developmental disability as defined in 52-3-803 MCA;

(c) outlines the provider's responsibility to report all known or suspected incidents of abuse, neglect, or exploitation of any client within 24 hours; and

(d) addresses handling of suspected or validated incidents of abuse, neglect, or exploitation.

(2) Any provider who knows or has reasonable cause to suspect an incident of child abuse or neglect has occurred must make a report within 24 hours of the incident to the state child abuse hotline (866) 820-5437 as required in 41-3-201, MCA.

(3) Any provider who knows or has reasonable cause to suspect an incident of abuse, neglect, or exploitation of a vulnerable adult has occurred must make a report within 24 hours of the incident to Adult Protective Services or other bodies as required in 52-3-811, MCA.

(4) In addition to reporting requirements in (2) and (3), the provider must also make a report to the department in writing within 24 hours of any allegations of client abuse, neglect, or exploitation within the program.

(5) The program must document, in writing, that the proper authorities have been contacted and the abuse, neglect, or exploitation has been reported.

(6) The provider must fully cooperate with any investigation conducted because of the report.

AUTH: 53-24-204, MCA
IMP: 41-3-102, 41-3-201, 52-3-803, 52-3-811, 53-24-208, MCA

NEW RULE V NON-MEDICAID MENTAL HEALTH SERVICES FOR ADULTS: REQUIREMENTS (1) In addition to requirements contained in rule, the

department has developed and published the Behavioral Health and Developmental Disabilities Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated October 1, 2022, which provides information and policies pertaining to state-funded behavioral health services and substance use disorder services and implements requirements for utilization management and services. The department adopts and incorporates by reference the manual as part of this rule. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual.

AUTH: 53-2-201, 53-21-1405, MCA
IMP: 53-21-1401, 53-21-1402, 53-21-1403, 53-21-1404, 53-21-1405, MCA

NEW RULE VI CONFIDENTIALITY (1) A substance use disorder facility (SUDF) must have a written client confidentiality policy pursuant to 42 CFR Part 2.

(2) The confidentiality policy must be reviewed with the client at the time of admission or as soon thereafter as the client is capable of rational communication.

(3) Policy requirements must include activities to:

(a) inform clients that federal law and regulations protect the confidentiality of alcohol and drug abuse client records; and

(b) provide clients with a summary in writing of the federal law and regulations.

(4) The written summary required in (3)(b) must include:

(a) a general description of limited circumstances under which a SUDF may acknowledge a client is present at a facility or disclose information identifying a client as an alcohol or drug abuser;

(b) a statement that violation of the federal law and regulations by a SUDF is a crime and suspected violations may be reported to appropriate authorities in accordance with these regulations;

(c) a statement that information related to a client's commission of a crime on the premises of the SUDF or against staff members of the SUDF is not protected;

(d) a statement that reports of suspected child abuse or neglect made under state law to appropriate state or local authorities are not protected; and

(e) a citation to the federal law and regulations.

(5) Client consent must be obtained for each release of information to any other person or entity if required under 42 CFR Part 2. The consent for release of information must have specific information pursuant to 42 CFR Part 2.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE VII REPORTING REQUIREMENTS (1) All serious incidents, as defined in ARM 37.106.1413, must be reported to the Department of Public Health and Human Services, Office of Inspector General, Licensure Bureau, within 24 hours. The report must be in writing and must include:

(a) the date and time of the incident;

(b) all clients and staff members involved; and

(c) a description of the incident and the circumstances surrounding it.

(2) A copy of the incident report must be maintained at the SUDF.

(3) A SUDF must report a change in administrator prior to the effective date of change.

(4) Changes in the facility location, use, or number of facility beds cannot be made without written notice to, and written approval received from, the department.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE VIII ABUSE OR NEGLECT REQUIREMENTS (1) A substance use disorder facility (SUDF) must require each staff member to read and sign a statement that:

(a) clearly defines child abuse and neglect as defined in 41-3-102, MCA;

(b) clearly defines abuse, neglect, and exploitation of an older person or a person with a developmental disability as defined in 52-3-803 MCA; and

(c) outlines the individual's responsibility to report all known or suspected incidents of abuse, neglect, or exploitation of any client within 24 hours.

(2) Any SUDF staff member who knows or has reasonable cause to suspect an incident of child abuse or neglect has occurred must make a report within 24 hours of the incident to the SUDF administrator, or a person designated by the SUDF administrator, and to the state child abuse hotline (866) 820-5437 as required in 41-3-201, MCA.

(3) Any SUDF staff member who knows or has reasonable cause to suspect an incident of abuse, neglect, or exploitation of a vulnerable adult has occurred must make a report within 24 hours of the incident to the SUDF administrator, or a person designated by the SUDF administrator and to Adult Protective Services or other bodies as required in 52-3-811, MCA.

(4) In addition to reporting requirements in (2) and (3), the SUDF must also make a report to the Office of Inspector General, Licensing Bureau in writing within 24 hours of any allegations of client abuse, neglect, or exploitation within the SUDF.

(5) The SUDF must document, in writing, that the proper authorities have been contacted and the abuse, neglect, or exploitation has been reported.

(6) The SUDF must fully cooperate with any investigation conducted because of the report.

(7) The SUDF must have written policies for handling suspected incidents of abuse, neglect, or exploitation, including:

(a) procedures for ensuring staff members suspected of abuse, neglect, or exploitation do not continue to provide direct care until an investigation is completed;

(b) development of a safety plan, approved by the department, which protects the client and staff member until the investigation is complete; and

(c) procedures for taking appropriate disciplinary measures against any staff member involved in an incident of client abuse, neglect, or exploitation upon validation of the allegation, including:

(i) termination of employment;

(ii) retraining of the staff member; or

(iii) any other appropriate action by the SUDF geared toward the prevention of future incidents of client abuse, neglect, or exploitation.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE IX STAFF MEMBER TRAINING (1) A substance use disorder facility (SUDF) must have written policies, procedures, and initial and ongoing training curriculum to meet minimum requirements in this rule.

(2) All staff members supervising, or providing, direct contact with clients must complete orientation training prior to supervising, or providing, direct care consisting of the following requirements:

(a) an overview of the SUDF policies, procedures, organization, and services;

(b) mandatory adult and child abuse, neglect, and exploitation reporting laws;

(c) fire safety, including emergency evacuation routes;

(d) confidentiality;

(e) suicide ideation and referral procedures;

(f) emergency medical procedures;

(g) documentation requirements;

(h) client rights and client grievance process;

(i) blood and air-borne pathogens;

(j) crisis prevention and de-escalation techniques; and

(k) upon completion of the orientation, the SUDF must complete a competency assessment for each staff member's ability to apply knowledge of material learned. Assessment results must be documented in each staff member's personnel file.

(3) Staff members supervising or providing direct care to clients must complete the following certification training within six months of hire:

(a) first aid;

(b) cardio-pulmonary resuscitation (CPR) that includes direct instruction of the practical and demonstrated applications of CPR methods as taught by an instructor from an accredited entity; and

(c) physical restraint training for adolescent programs utilizing physical restraint.

(4) Staff members must maintain and update trainings and certifications in (3) as required.

(5) Staff members providing direct care to clients must not work unsupervised with clients without completing requirements in (3).

(6) The SUDF must ensure 20 hours of annual training is provided for staff members providing direct care to improve proficiency in their knowledge and skills for the level of care provided.

(7) All training must be documented and kept on file for each staff member.

(8) All staff members working with adolescents must have training in adolescent development.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE X ADOLESCENT FACILITIES (1) In addition to policies required throughout this rule, a SUDF licensed to serve adolescents must have written policies and procedures that address:

(a) limiting admission to adolescents 17 years of age or younger or adolescents 18, 19, and 20 years of age if a client is enrolled in certified secondary school, and the assessment completed by a LAC or mental health professional with substance use in the scope of their license determines their appropriateness for adolescent treatment;

(b) age-appropriate treatment;

(c) separation of adolescents from adults in all characteristics of the treatment process;

(d) separation of adolescents from adults in all non-treatment aspects including eating, sleeping, bathing, and recreation activities; and

(e) staffing patterns to ensure staff members of the same sex as clients are present at all times.

(2) The SUDF must maintain the minimum client to direct care staff ratios:

(a) from 7:00 a.m. to 11:00 p.m.: eight adolescents to one direct care staff;

(b) from 11:00 p.m. to 7:00 a.m.: 12 adolescents to one direct care staff; and

(c) programs must have at least one awake night staff in each building or unit housing adolescents.

(3) The SUDF must:

(a) allow communication between the adolescent and the adolescent's parent or legal guardian a minimum of one time per week and facilitate the communication when clinically appropriate;

(b) provide family therapy as indicated in the individualized treatment plan or document reasons why family therapy may not be provided;

(c) notify the parent or legal guardian within two hours of any serious incident as defined in ARM 37.106.1413 involving the adolescent;

(d) discharge the adolescent to the care of the adolescent's parent or legal guardian. For emergency discharge and when the parent or legal guardian is not available, the program must contact the appropriate authority; and

(e) only admit adolescents with the written consent of the adolescent's parent or legal guardian.

(4) The SUDF must have protocols for evaluating the treatment implications and safety concerns for determining whether being placed in a room with another specific adolescent is appropriate.

(5) In no circumstances should adolescents of more than three years age difference be placed in the same room.

(6) Adolescent facilities utilizing physical restraints must have written policies and procedures governing the appropriate use of crisis intervention and physical restraint strategies including:

(a) training for all staff in crisis intervention, de-escalation, and physical restraint by a state approved or nationally recognized program;

(b) that crisis prevention and de-escalation techniques are the preferred methods and must be used first to manage behavior;

(c) physical restraint must only be used to safely control an adolescent until the adolescent can regain control of the adolescent's own behavior;

(d) prohibit the use of physical restraint if an adolescent has a documented physical condition that would contradict its use unless a health care professional has previously and specifically authorized its use in writing. Documentation must be maintained in the adolescent's client record; and

(e) prohibiting the use of prone physical restraints.

(7) Physical restraint must only be used in the following circumstances:

(a) when the adolescent has failed to respond to de-escalation techniques, and it is necessary to prevent harm to the adolescent or others; or

(b) when an adolescent's behavior puts themselves or others at substantial risk of harm and the adolescent must be forcibly moved.

(8) Physical restraint must be used only by staff members who are specifically trained and certified in physical restraint techniques.

(9) The SUDF must document the following for each physical restraint:

(a) adolescent's behavior which required the physical restraint;

(b) specific attempts to de-escalate the situation before using physical restraint;

(c) length of time the physical restraint was applied, including documentation of the time the restraint began and ended;

(d) identity of specific staff member(s) involved in administering the physical restraint;

(e) type of physical restraint used;

(f) any injuries to the adolescent resulting from the physical restraint; and

(g) a face-to-face debriefing completed within 24 hours of the restraint, including:

(i) the staff member(s) and adolescent involved in the physical restraint;

(ii) providing the adolescent and staff involved the opportunity to discuss the circumstances resulting in the use of the restraint; and

(iii) strategies that could be used by the staff, the adolescent, and/or others that could prevent the future use of restraint.

(10) The SUDF must provide access to an educational program appropriate to the needs of the youth and comply with state school attendance laws, as provided in Title 20, chapter 5, MCA.

(11) Group counseling sessions must be provided by a licensed addiction counselor or mental health professional and must not exceed eight adolescents to one adult staff member.

(12) All staff members working directly with adolescents must be at least 21 years of age.

(13) The SUDF must not employ any staff member that has a substantiation of child abuse or neglect.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XI MEDICATION STORAGE AND ADMINISTRATION (1) A substance use disorder facility (SUDF) must have a written policy addressing requirements for the storage, administration, and disposal of prescription, nonprescription, and over-the-counter medication.

(a) Policies must include protocols for daily monitoring, counting of stored narcotics and other medication that has the potential for abuse.

(2) All medication must be:

(a) kept in a locked non-portable container or in a locked medical room; and

(b) stored in its original container with the original prescription label.

(3) For assistance with self-administration of medications outside of the facility, all medications must be in the possession of a staff member trained to assist with the self-administration of medications.

(4) Staff members assisting with medication self-administration must be trained to assist in proper medication procedures.

(a) Upon completion of the training, the SUDF must test each staff member's knowledge and observe staff demonstrating the skills of such materials. Test results must be documented in each staff member's personnel file.

(5) All medications must be ordered by a licensed health care professional working within the scope of his/her practice. All prescription orders must contain the dosage to be given.

(6) A written record of all medications self-administered by a client must be maintained. The record must include:

(a) client's name;

(b) name and dosage of medication;

(c) date and time the medication was taken or was refused by the client;

(d) name of the staff member who assisted in the self-administration of the medication; and

(e) documentation of any medication error, the results of such error, any effects observed, and any action taken to address such error.

(7) A written record of all medications administered by a licensed health care professional must be maintained and meet documentation requirements for medication administration under the professional's individual license.

(8) Prescribed medication must not be stopped or changed in dosage or administration without first consulting a licensed health care professional, as defined in ARM 37.106.2805. Consultation results must be recorded in the client's record. The licensed health care professional must document, in writing, any changes to medication. This documentation must be kept as part of the client's record.

(9) Placing case workers, parents, or custodial guardians must be notified of all medications prescribed to adolescents, including medication changes.

(10) All unused and expired medication must be properly disposed of and documented in the client's record.

(11) A SUDF cannot require clients to discontinue the use of any medication prescribed by a licensed health care professional for admission.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XII PETS (1) When pets are kept on the premises, the SUDF must write and adhere to procedures for their care and maintenance.

(2) When animals are kept on the premises, the following conditions must be met:

(a) proof of current vaccinations must be kept on file at the facility;

(b) pets not confined in enclosures must be under control;

(c) pets must not present a danger to clients, staff members, or visitors;

(d) pets are not permitted in food preparation, storage, or dining areas during meal preparation time or during meal service or in an area where their presence would create a significant health or safety risk to others;

(e) staff members and clients must wash their hands after handling animal food and animal waste;

(f) pets must be kept clean and disease-free;

(g) pet enclosures, bedding, equipment, and supplies are kept clean and in good repair; and

(h) protocols are in place to address how reasonable accommodations will be made for clients and staff members with allergies to animals housed in the facility or who may visit the facility as part of a therapeutic treatment program.

(3) The SUDF will not keep or bring in ferrets, turtles, iguanas, lizards, or other reptiles, psittacine birds (birds of the parrot family), or any wild or dangerous animals.

(4) This rule does not apply to service animals.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XIII FOOD SERVICE (1) An inpatient or residential SUDF must establish policies and procedures for standards relative to safe food handling, storage, preparation, and serving, to prevent food spoilage and the transmission of infectious disease. The policies and procedures must include provisions that:

(a) all food must be from an approved source and shall be transported, stored, covered, prepared, and served in a sanitary manner to prevent contamination;

(b) food must be free from adulteration or other contamination and must be safe for human consumption;

(c) food removed from the original container must be dated, labeled, and sealed;

(c) milk and other dairy products must be pasteurized;

(d) use of home canned foods other than jams, jellies, and fruits is prohibited;

(e) use of thermometers is required to check food temperatures;

(f) cold storage of potentially hazardous food must be at 41°F or below;

(g) frozen food must be kept frozen;

(h) hot storage of potentially hazardous food must be 135°F or above;

(i) each type of food must be stored and arranged so that cross-contamination of one type with another is prevented;

(j) raw fruits and vegetable must be thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other

ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruits and vegetables may be washed by using chemicals approved by the U.S. Environmental Protection Agency;

(k) food packages must be in good condition and protect their contents, so that the food is not exposed to adulteration or potential contaminants; and

(l) packaged food may not be stored in direct contact with water or undrained ice if the food package could allow water entry.

(2) The facility must have conveniently located hand washing facilities, supplied with hand soap, disposable towels kept clean in a dispenser, and a cleanable trash can.

(3) Staff handling or preparing food shall thoroughly wash hands, wrists, and exposed arms with soap and warm running water for at least 20 seconds:

(a) before touching anything used to prepare food;

(b) before touching food that will not be cooked;

(c) after touching raw meat, fish, or poultry;

(d) after cleaning, handling dirty dishes, removing garbage, or storing supplies;

(e) after using the toilet facilities;

(f) after eating or drinking;

(g) after touching the face, hair, or skin;

(h) after blowing the nose, coughing, or sneezing; and

(i) after touching any soiled object.

(4) After handwashing, hands must be dried, and faucets turned off with a clean paper towel.

(5) If used, chemical hand sanitizers must be followed by thorough hand rinsing before contact with food.

(6) General health and safety requirements include the following:

(a) use of clean cutting boards, knives, can openers, and other equipment and utensils for each type of food preparation to prevent cross-contamination;

(b) a person with symptoms of a communicable disease that can be transmitted to foods or who is a carrier of such a disease may not work with food, clean equipment, or clean utensils;

(c) kitchenware, tableware, and food contact surfaces must be washed, rinsed, and completely dried after each use; and

(d) sinks used for food preparation must be cleaned before beginning the preparation of the food.

(7) A domestic style dishwasher may be used only if it is equipped with a heating element and the following conditions are met:

(a) the dishwasher must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization; and

(b) at least a two-compartment sink must be available as a backup in the event the dishwasher becomes inoperable.

(8) If a two-compartment sink is used, all dishware, utensils, and food service equipment must be thoroughly cleaned in the first sink compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label and sanitized in the second compartment by immersion in any chemical sanitizing agent.

(9) Food must be served in amounts and variety sufficient to meet the nutritional needs of each client.

(10) At least three meals must be offered daily and at regular times, with not more than a 12-hour span between an evening meal and breakfast unless a nutritious snack is available in the evening, then up to 14 hours may lapse between a substantial evening meal and breakfast.

(11) Records of menus as served must be on file for three months after the date of service for review by the department.

(12) The SUDF must provide for therapeutic or special diets ordered by the client's licensed health care professional.

(13) A minimum of a one-week supply of non-perishable foods and a two-day supply of perishable foods must be available on the premises.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XIV ASAM 3.5 CLINICALLY MANAGED HIGH INTENSITY RESIDENTIAL (ADULT)/MEDIUM INTENSITY RESIDENTIAL (ADOLESCENT) SUBSTANCE USE DISORDER FACILITY REQUIREMENTS (1) To be licensed to provide ASAM 3.5 services as outlined in the ASAM Criteria, a SUDF must meet the following staffing requirements:

(a) clinical director;

(b) licensed addiction counselors or mental health professionals in sufficient numbers to provide counseling and therapy services to clients with substance use and mental disorders as described by this chapter and in accordance with the clients' individualized treatment plans;

(c) a licensed addiction counselor or mental health professional must be on-site or on call 24 hours a day, seven days a week;

(d) care managers in sufficient numbers to provide services to clients required by this chapter and in accordance with the clients' individualized treatment plans; and

(e) rehabilitation aides in sufficient number to provide on-site 24 hours a day, seven days a week staffing to assure the safety of clients and to provide direct care services and supervision of clients.

(2) Daily clinical and other scheduled skilled treatment services must be provided on-site a minimum of seven hours (four hours for adolescent programs) per day.

(3) The SUDF must provide recreational activities daily.

(4) The SUDF must coordinate transfers with other licensed health care facilities or correctional facilities.

(5) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care must be available through direct affiliation or referral processes.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XV ASAM 3.3 CLINICALLY MANAGED POPULATION SPECIFIC HIGH INTENSITY RESIDENTIAL (ADULT ONLY) SUBSTANCE USE DISORDER FACILITY (1) To be licensed to provide ASAM 3.3 services as outlined in the ASAM Criteria, a SUDF must meet the following staffing requirements:

(a) clinical director;

(b) licensed addiction counselors or mental health professionals in sufficient numbers to provide counseling and therapy services to clients with substance use and mental disorders as described by this chapter and in accordance with the clients' individualized treatment plans;

(c) a licensed addiction counselor or mental health professional must be on-site or on call 24 hours a day, seven days a week;

(d) care managers in sufficient numbers to provide services to clients required by this chapter and in accordance with the clients' individualized treatment plans; and

(e) rehabilitation aides in sufficient number to provide on-site 24 hours a day, seven days a week staffing to assure the safety of clients and to provide direct care services and supervision of clients.

(2) Daily scheduled skilled treatment services must be provided on-site. Services must be adapted to the client's developmental stage and level of comprehension in accordance with the client's individualized treatment plan.

(3) Individuals with significant cognitive deficits require specialized services to be offered at a slower, repetitive pace.

(4) The SUDF must provide recreational activities daily.

(5) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care must be available through direct affiliation or referral processes.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XVI ASAM 3.1 CLINICALLY MANAGED LOW INTENSITY RESIDENTIAL (ADULT OR ADOLESCENT) SUBSTANCE USE DISORDER FACILITY (1) To be licensed to provide ASAM 3.1 services as outlined in the ASAM Criteria, a SUDF must meet the following staffing requirements:

(a) clinical director;

(b) licensed addiction counselors or mental health professionals in sufficient numbers to provide counseling and therapy services to clients with substance use disorders as described by this chapter and in accordance with the clients' individualized treatment plans;

(c) care managers in sufficient numbers to provide services to clients required by this chapter and in accordance with the clients' individualized treatment plans; and

(d) rehabilitation aides in sufficient numbers to provide on-site 24 hours a day, seven days a week staffing to assure the safety of clients and to provide direct care services and appropriate supervision of clients.

(2) Weekly scheduled skilled treatment services must be provided on-site a minimum of five hours per week.

(3) Life skills training provided in a one on one or classroom setting, as part of the daily living regiment, must utilize an evidence-based practice addressing independent living skills, vocational skills, and parenting skills.

(4) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care must be available through direct affiliation or referral processes.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XVII ASAM 2.5 PARTIAL HOSPITALIZATION SUBSTANCE USE DISORDER FACILITY (1) To be licensed to provide ASAM 2.5 services as outlined in the ASAM Criteria, a SUDF must meet the following staffing requirements:

(a) clinical director;

(b) licensed addiction counselors or mental health professionals in sufficient numbers to provide counseling and therapy services to clients with substance use disorders as described by this chapter and in accordance with the clients' individualized treatment plans;

(c) care managers in sufficient numbers to provide services to clients required by this chapter and in accordance with the clients' individualized treatment plans; and

(d) rehabilitation aides in sufficient number to provide direct care services and supervision of clients.

(2) The SUDF must have direct access by consultation or referral to medical and psychiatric services within eight hours by telephone or 48 hours in person.

(3) Weekly scheduled skilled treatment services must be provided by an interdisciplinary team of appropriately licensed and trained staff a minimum of 20 hours per week.

(4) If treatment services cannot be provided a minimum of 20 hours in a given week due to unforeseen issues such as illness, medical appointments, or other similar circumstances, the program must document the following:

(a) reason for not meeting the minimum hourly requirements; and

(b) attempts to follow-up and reschedule client treatment services.

(5) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care and supportive housing services must be available through direct affiliation or referral processes.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XVIII OUTPATIENT SUBSTANCE USE DISORDER FACILITY

(1) To be licensed to provide SUD services in an outpatient setting, a SUDF must meet the following staffing requirements:

(a) clinical director;

(b) licensed addiction counselors or mental health professionals in sufficient numbers to provide counseling and therapy services to patients with substance use

disorders as described by this chapter and in accordance with the patients' individualized treatment plans; and

(c) care managers in sufficient numbers to provide services to patients required by this chapter and in accordance with the patients' individualized treatment plans.

(2) Skilled treatment services must be provided by an interdisciplinary team of appropriately licensed, certified, and/or trained staff.

(3) An outpatient substance use disorder facility must provide crisis telephone services and comply with the following requirements:

(a) ensure crisis telephone services are available 24 hours a day, seven days a week;

(b) answering services or other individuals may be used to transfer calls to individuals trained to respond to crisis calls.

(4) The facility must have written policies and procedures outlining crisis telephone services that include:

(a) training requirements for individuals responding to crisis calls;

(b) ensuring a licensed addition counselor or mental health professional provides consultation and backup, as indicated, for unlicensed individuals responding to crisis calls; and

(c) utilization of community resources.

(5) The facility must maintain documentation for each crisis call that includes:

(a) the date and time of the call;

(b) the staff involved;

(c) identifying data, if possible;

(d) the nature of the emergency, including a screening of safety and risk, strengths and resources, and medical concerns related to the crisis; and

(e) the result of the intervention.

(6) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care and supportive housing services must be available through direct affiliation or referral processes.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XIX COMMUNICABLE DISEASE CONTROL (1) The SUDF must develop and implement an infection prevention and control program and review the program annually.

(2) The SUDF must have written policies and procedures regarding infection prevention and control which include:

(a) procedures to identify high risk individuals;

(b) specific procedures to address tuberculosis (TB), Hepatitis A, Hepatitis C, sexually transmitted infections (STI), and human immunodeficiency virus (HIV); and

(c) the identification of methods used to protect, contain, or minimize the risk to clients, staff members, and visitors.

(3) The administrator or designated person is responsible for the direction, provision, and quality of infection prevention and control services.

(4) Facilities must implement TB protocols for all staff members and clients based upon an annual TB Risk assessment as set forth by the Montana Tuberculosis Prevention and Control Program pursuant to ARM Title 37, chapter 114, subchapter 10. Risk assessment and TB manuals are found at https://dphhs.mt.gov/publichealth/cdepi/diseases/Tuberculosis/.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

NEW RULE XX CARE MANAGEMENT (1) In addition to the requirements established in this subchapter, each SUDF must provide care management services and comply with the requirements established in this rule.

(2) A care manager must have a bachelor's degree in a human services field, a combination of education and experience, or a minimum of two years of experience serving individuals with behavioral health issues.

(3) Care management services must be provided by staff whose primary duty is the provision of care management services.

(4) The SUDF must develop written policies and procedures addressing the independence of the care manager and care management program. At a minimum, the policies and procedures must address:

(a) the care manager's role in conflicts between the client and the SUDF or other agencies;

(b) the ability of the care manager to freely advocate for services from the SUDF or other agencies on behalf of the client;

(c) the relationship between the licensed addiction counselor or mental health professional and the care manager;

(d) the obligation to report information to the SUDF staff that the client has requested to be kept confidential; and

(e) the ability of the targeted care manager to contact an advocacy organization if the care manager believes the SUDF is unresponsive to the needs of the client.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.27.101 STATE APPROVED PROGRAMS, PURPOSE (1) The purpose of the rules in this subchapter is to establish standards for the approval of programs providing prevention, treatment, rehabilitative, and recovery services to individuals with substance use disorders and substance related issues, as provided in Title 53, chapter 24, part 2, MCA.

(2) Each public or private substance use disorder program providing services and receiving alcohol earmarked revenue funds under 53-24-108, MCA, shall be subject to approval by the department. The department will issue approval for the following substance use disorder (SUD) levels of care and specialty services,

outlined in the American Society of Addiction Medicine (ASAM) Criteria and Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Manual:

(a) ASAM 3.7 Medically Monitored Intensive Inpatient Services;

(b) ASAM 3.7-WM Medically Monitored Withdrawal Management Services;

(c) ASAM 3.5 Clinically Managed High-Intensity (adult) and Medium Intensity (adolescent) Residential Services;

(d) ASAM 3.3 Clinically Managed Population-Specific High Intensity (adult only) Residential Services;

(e) ASAM 3.2-WM Clinically Managed Residential Withdrawal Management Services;

(f) ASAM 3.1 Clinically Managed Low Intensity (adult or adolescent) Residential Services;

(g) ASAM 2.5 Partial Hospitalization Services;

(h) ASAM 2.1 Intensive Outpatient Services;

(i) ASAM 1.0 Outpatient Services;

(j) ASAM 0.5 Early Intervention;

(k) SUD Prevention;

(l) SUD Certified Behavioral Health Peer Support Services; and

(m) SUD Targeted Case Management.

AUTH: 53-24-207, MCA
IMP: 53-24-207, MCA

37.27.102 DEFINITIONS In addition to the terms defined in 53-24-103, MCA:

(1) ~~"ADIS" means the alcohol and drug information system.~~ "American Society of Addiction Medicine (ASAM) Criteria" means guidelines for placement, continued stay, and transfer/discharge of individuals with addiction and co-occurring conditions developed by the American Society of Addiction Medicine.

~~(2) "Administrator" means the person in charge, care or control of the treatment program and responsible for the operation of the program.~~

~~(3) "Aftercare" means counseling services provided to a client, who has completed inpatient or intensive outpatient care, to enhance the chances of recovery. This service is provided at least once weekly (generally group) for a period of at least 12 weeks.~~

~~(4) "Approved list" means the listing of the department approved workshops relevant to chemical dependency personnel and trainers who possess the qualifications to train such personnel.~~

(2) "BHDD Medicaid Manual" means the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health adopted and incorporated in ARM 37.27.902. The manual can be found at: https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual.

(3) "BHDD Non-Medicaid Manual" means the Behavioral Health and Developmental Disabilities (BHDD) Division Non-Medicaid Services Provider Manual for Substance Use Disorder adopted and incorporated in ARM 37.27.902. The

manual can be found at:
https://dphhs.mt.gov/amdd/AMDDNonMedicaidServicesProviderManual.

~~(5)~~(4) "Biopsychosocial assessment" means ~~a comprehensive assessment which includes a history of the use of alcohol and other drugs, physical, emotional, social and spiritual needs. This assessment corresponds to the checklist of dimensional admission criteria utilized in patient placement~~ an evaluation of the client's strengths, resources, preferences, limitations, problems, needs, and priorities as described in the BHDD Medicaid Manual.

(5) "Continuing care plan" means a discharge or recovery management plan as described in the BHDD Medicaid Manual.

~~(6) "Capacity grace period" means if, through lack of capability or other reason, the department is unable to accommodate an applicant for testing, a grace period will be granted to operate on registration alone until the applicant can be tested.~~

~~(7) "Chemical dependency counselor" means an individual licensed as a licensed addiction counselor pursuant to 37-35-202, MCA, and as described in ARM 8.11.101 through 8.11.120.~~

~~(8) "Client" means a person being treated for a chemical dependency related problem who is formally admitted to the program within the admission criteria set by the program.~~

~~(9) Counseling:~~

~~(a) "Family" means face-to-face interaction between a certified or eligible chemical dependency counselor and family member or members for a specific therapeutic purpose.~~

~~(b) "Group" means face-to-face interaction between two or more clients and a certified or eligible chemical dependency counselor for a specific therapeutic purpose.~~

~~(c) "Individual" means a face-to-face interaction between a certified or eligible chemical dependency counselor and an individual client for a specific therapeutic purpose.~~

~~(10) "Day treatment care component" means services for persons requiring a more intensive treatment experience than intensive outpatient but who do not require inpatient treatment. This level of care provides at least five hours of contact time per day for at least four days per week. This service is generally provided within an inpatient setting and requirements for services are the same with the exception of residential.~~

~~(11) "Detoxification (emergency care) component" means the services required for the treatment of persons intoxicated or incapacitated by alcohol and/or drugs. Detoxification involves clearing the system of alcohol and/or drugs and enabling individual recovery from the effects of intoxication. These services include screening of intoxicated persons, counseling of clients to obtain further treatment, and referral of detoxified persons to other appropriate treatment programs. Medical detoxification refers to short term treatment in a licensed medical hospital. Non-medical detoxification refers to short term treatment in a social setting with 24 hour supervision.~~

~~(12) "Documentable or documented" means a person who by position is found credible by the department (e.g., a program director, personnel manager,~~

~~program board officer) and will sign a form attesting the dates, hours, and job titles reported for salaried employment or annual clock hours of service per year for volunteers, etc., as required. For academic work this would be an official transcript. For workshop, it would be a record of the training or affidavit.~~

~~(13) "Duplication" means counting the same point earning activity in more than one point category.~~

~~(14) "Examination eligibility" means applicants must be on the registry in categories A or B to take oral, performance, and written tests. An applicant failing three times to attain a passing grade on any examination must wait one year before attempting the examinations again.~~

~~(15)~~(6) "Facility" means ~~the physical area (grounds, buildings or portions thereof) where program functions take place under the direct administrative control of a program administrator~~ a public or private organization as defined in 50-5-101, MCA. Programs approved under ARM 37.27.105 and 37.27.107 are not considered a facility.

(7) "Individualized treatment plan" means a plan of care developed in collaboration with the patient, as described in the BHDD Medicaid Manual.

(8) "Licensed addiction counselor (LAC)" means an individual licensed under requirements pursuant to Title 37, chapter 35 MCA, and ARM Title 24, chapter 219, subchapter 50, to provide addiction counseling. References in this subchapter to a LAC do not include an addiction counselor licensure candidate registered pursuant to Title 37, chapter 35, part 2, MCA.

~~(16) "Field" means all persons currently employed in a state accepted program, serving as a board member of such a program, serving on any state level advisory board for the department, or employed directly or on contract by the department.~~

~~(17) "Follow up" means the process of providing continued contact with a discharged client to support and increase gains made to date in the recovery process and to gather relevant data.~~

~~(18) "Full-time equivalent (FTE)" means an individual employed 40 hours per week in an accepted program (a half time FTE equals 20 hours per week).~~

~~(19) Governing body" means the individual or group which is legally responsible for the conduct of the program.~~

~~(20) "Inpatient free standing care component" means treatment for persons requiring 24 hour supervision in a community based residential setting. Services include a physical exam signed by a licensed physician; chemical dependency education; organized individual, group and family counseling; discharge referral to necessary supportive services and a client follow up program after discharge.~~

~~(21) "Inpatient-hospital care component" means treatment for persons requiring 24-hour supervision in a licensed hospital or suitably equipped medical setting licensed by the department under 50-5-201, MCA. Services include medical evaluation and health supervision; chemical dependency education; organized individual, group and family counseling; discharge referral to necessary supportive services; and a client follow up program after discharge.~~

~~(22) "Intensive outpatient care component" means treatment for persons requiring a structured outpatient program providing at least ten to 30 hours of counseling and chemical dependency education services per week for a duration of~~

~~four to six weeks. Services shall include assessment, group, individual, and family counseling, chemical dependency education, referral and discharge.~~

~~(23) "Intermediate care (transitional living) component" means a non-medical residential facility in a community-based setting. These facilities provide a transitional phase for individuals who have recently received chemical dependency inpatient care services and require a moderately structured living arrangement. Services provided include counseling services (individual and group), chemical dependency education and social and recreational activities. These individuals are encouraged to seek vocational rehabilitation, occupational training, education and/or employment as soon as possible.~~

~~(24) "Judges" means persons rating work performance tapes.~~

~~(25) "Limited approval" means a status of state approval granted to chemical dependency treatment programs which are requesting approval for the first time and who have not attained substantial compliance specified in these rules. Limited approval is granted to provide them with time to comply with standards. Limited approval shall not be issued for more than a six month period.~~

~~(26) "Medicaid provider of substance dependency and abuse treatment services" means a state approved inpatient free standing, intensive outpatient, outpatient, or intermediate care provider of chemical dependency treatment services. The provider must be enrolled in the substance dependency/abuse Medicaid rehabilitation option 32 set forth in ARM 37.27.901. To be enrolled the provider must meet the standards and follow the procedures adopted and incorporated by reference in ARM 37.27.912.~~

~~(27) "Outpatient care component" means services provided on a regularly scheduled basis to clients residing outside a program. Services include crisis intervention; counseling; chemical dependency education; referral services; and a client follow up program after discharge.~~

~~(28) "Outreach" means the process of reaching into a community systematically for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating other needed services, and enabling persons to enter and accept those services.~~

~~(29) "Panel" means the group of three persons who conduct oral examinations for an endorsement area.~~

~~(30) "Panelist" means a person serving on an oral examination panel.~~

~~(31) "Person(s)" means an individual or a group of individuals, association, partnership, or corporation.~~

~~(32) "Physician" means a medical doctor licensed by the state of Montana.~~

~~(33)~~(9) "Program" ~~means~~ is the general term for an organized system of services designed to address the treatment needs of clients.

(10) "Progress note" is a written record of a treatment session or service contact as defined in the BHDD Medicaid Manual.

(11) "Provisional approval" means a status of state approval granted to chemical dependency treatment programs which are requesting approval for the first time and which have not attained substantial compliance specified in these rules.

~~(34) "Program effectiveness" means utilization of measurable indicators to demonstrate effectiveness.~~

~~(35) "Quality assurance" means a program and/or efforts designed to enhance quality care through an ongoing objective assessment of important aspects of client care and the correction of identified problems.~~

~~(36) "Registry" means the list on which applicants for certification are placed.~~

~~(37) "Removal from system" means any applicant who has been on the registry for two years without obtaining sufficient points for certification will be dropped from consideration. Those who are dropped may not reapply for a period of two years.~~

~~(38) "Residential" means a facility providing 24 hour care, room and board.~~

~~(39)~~(12) "Restricted approval" means a status of provisional state approval granted to ~~an~~ a state approved ~~chemical dependency treatment~~ program which has failed to maintain substantial compliance to enable it to meet the requirements of this subchapter. Restricted status is issued for a maximum of 90 days in order to allow programs to meet ~~substantial compliance~~ requirements. This approval cannot be renewed.

~~(40)~~(13) "Revoke" means invalidation of state approval of a ~~chemical dependency~~ program.

~~(41) "Role play" means a spontaneous exchange between the counselor and the person playing the part of the client for the purposes of the taped work sample. Reading from a prepared script will not be considered as a test of counselor competency.~~

~~(42) "Rounding" means that if totaling and averaging (e.g., with FTEs) result in fractional points, these will be rounded down to reflect amounts clearly earned.~~

~~(43)~~(14) "State approved program" means a program reviewed and accepted by the department to provide substance ~~dependency~~ use disorder prevention, treatment, rehabilitation, and/or recovery services.

(15) "Substance use disorder (SUD)" means chemical dependency, as defined in 53-24-103, MCA.

~~(44) "Substantial compliance" means conformity with at least 70% of the rules and regulations for each applicable service component as described in this chapter.~~

~~(45)~~(16) "Suspension" means invalidation of state approval of a ~~chemical dependency treatment~~ program for any period less than one year or until the department has determined ~~substantial compliance~~ that the program meets all requirements of this subchapter and notifies the program of reinstatement.

~~(46) "Trainee/intern privileges" means authorization by a certified counselor to allow a trainee or intern to provide counseling services on a progressive basis which are closely monitored and supervised within well described limits and are based on their training, experience, demonstrated competency, ability and judgment.~~

~~(47) "Training day" means a training day is six to ten hours of continuous training. When dates and hours are available, credit will be granted.~~

~~(48) "Volunteers" means a person or persons who offer their services free of charge.~~

~~(a) "Active volunteer" means an individual who has 50 hours per year of volunteer time.~~

AUTH: 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

IMP: 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.105 STATE APPROVED PROGRAMS, PREVENTION PROVIDERS, REQUIREMENTS (1) through (3) remain the same.

(4) If the application and supporting documentation meet the application requirements, the department shall issue provisional approval. Provisional approval is granted to provide time to comply with standards. Within 90 days of granting provisional approval, the department shall inspect the provider either on-site or remotely.

(5) through (8) remain the same.

(9) Approved providers must follow the American Society of Addiction Medicine (ASAM) Criteria in the provision of early intervention services and adhere to requirements outlined in the ~~AMDD~~ BHDD Medicaid Services Provider Manual for SUD and Adult Mental Health located at:
~~https://dphhs.mt.gov/amdd/policymanualmedicaid~~
https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual.

AUTH: 53-2-201, 53-24-204, MCA
IMP: 53-24-204, 53-24-207, MCA

37.27.106 ~~DEPARTMENT PROCEDURES FOR APPROVAL OF CHEMICAL DEPENDENCY TREATMENT PROGRAMS~~ STATE APPROVED PROGRAMS, SUBSTANCE USE DISORDER FACILITIES (1) ~~Each public or private program providing services for chemical dependency treatment and receiving alcohol earmarked revenue funds under 53-24-108, MCA, shall be subject to approval by the department. The department will issue approval for the following service components: detoxification (emergency care), inpatient hospital, inpatient free standing, intermediate (transitional living), and outpatient. A program may be approved for more than one service if the program complies with the specific requirements for approval of each service provided. Programs providing detoxification (non-medical) must also provide at least one of the other components listed above. The certificate of approval shall be obtained annually. Issuance of the certificate of approval shall be conditional to establishing and operating programs in compliance with this rule~~ In order to be reimbursed for SUD facility-based treatment services, a SUD facility must be state approved and licensed pursuant to ARM Title 37, chapter 106, subchapter 14.

(2) ~~Chemical dependency treatment programs seeking departmental approval of one or more services shall submit written application to the department on a form provided by the department~~ In order to become state approved, the SUD facility provider must complete and submit the designated application to the department. The SUD facility must be licensed for the level(s) of care indicated in the application.

~~(a) Such application shall include a detailed description of the facility, personnel and services to be provided.~~

(3) ~~The application shall be completed as per instructions and contain the following:~~ If the application and supporting documentation do not meet the

application requirements, the department will notify the applicant in writing identifying the incomplete or missing information within 30 days of receipt of the application.

(a) ~~A letter from the applicant, including supporting information and statistics, showing that there is a need in the community for the type of services requested in the application~~ The applicant has 30 days from the date of notification to respond in writing to the content of the notice.

(b) ~~Evidence that the need for the requested services are included in the county plan as required by 53-24-211, MCA~~ If the response is not received within 30 days, the department will deny approval and will notify the applicant in writing of the denial.

~~(4) Within 30 days of receiving the application, the department will notify the applicant in writing of acceptance or denial of the application.~~

~~(5) If the department denies the application for approval, the applicant has 30 days to request a formal hearing as provided for in the Montana Administrative Procedure Act. If a response is not received at the end of 30 days, the department may refuse to grant approval and shall notify the applicant agency.~~

~~(6)~~(4) If the application ~~is approved~~ and supporting documentation meet the application requirements, the department ~~will notify the agency in writing and copies of all written documents required by these rules and regulations shall be requested~~ shall issue full approval. Documentation must include evidence of an active facility license.

(5) The department shall issue a final approval or deny the application and shall send written notification of full approval or denial to the applicant.

(6) The department will reimburse a state approved facility for SUD facility-based services, as outlined in the BHDD Medicaid Manual, using appropriate Common Procedural Terminology (CPT) codes and Healthcare Common Procedure Coding System (HCPCS) codes on applicable department fee schedules.

(7) ~~If written documents submitted to the department do not meet the requirements of these rules and regulations, the department shall notify the applicant in writing. The applicant shall have 30 days from date of notification to respond in writing to the content of the notice. If a response is not received within 30 days, the department may refuse to grant approval and shall notify the applicant in writing of the action taken. If written documents submitted to the department do meet the requirements of these rules and regulations, the department shall have the program inspected to ensure compliance with the requirements of these rules and regulations. After inspection, the department shall either approve the program to provide one or more of the services listed in this section or refuse to grant approval. The department shall send written notification of approval of the program as an approved chemical dependency treatment program or shall send written notification of the deficiencies which resulted in the refusal to grant approval~~ The department will inspect the facility once every two years, on-site or remotely, to ensure the facility continues to meet the requirements of this rule.

(8) ~~The department may grant limited approval to chemical dependency treatment programs when department staff are unable to determine, without a period of operation, whether the program will comply with these rules and regulations. Limited approval shall expire automatically after six months and may not be renewed. Such expiration shall not be considered a suspension or revocation~~

~~pursuant to ARM 37.27.108~~ The provider must submit the requested documentation to the department or allow the department access to the provider's premises for inspection.

(9) ~~The department shall issue an annual certificate of approval to those approved chemical dependency treatment programs which remain in substantial compliance with these rules and regulations~~ Approved facilities must follow the ASAM Criteria in the provision of services and adhere to requirements outlined in the BHDD Medicaid Manual.

~~(10) The department may revoke or suspend any service component listed in ARM 37.27.106(1) if a program ceases to provide those services for which it has been approved.~~

AUTH: 53-24-208, 53-24-204, MCA
IMP: 53-24-208, MCA

37.27.107 STATE APPROVED PROGRAMS, INDIVIDUAL OUTPATIENT TREATMENT PROVIDERS (1) In order to be reimbursed for outpatient services, an individual outpatient treatment provider must be state approved and be a licensed addiction counselor.

(2) In order to become state approved, the ~~outpatient provider~~ licensed addiction counselor (LAC) must complete and submit the designated application to the department.

(3) remains the same.

(4) If the application and supporting documentation meet the application requirements, the department shall issue provisional approval. Provisional approval is granted to provide time to comply with standards. Within 90 days of granting provisional approval, the department shall inspect the provider either on-site or remotely.

(5) through (8) remain the same.

(9) Approved providers must follow the ASAM Criteria in the provision of services and adhere to requirements outlined in the ~~AMDD~~ BHDD Medicaid Services Provider ~~manual~~ Manual. ~~for SUD and Adult Mental Health located at: https://dphhs.mt.gov/amdd/policymanualmedicaid.~~

AUTH: 53-2-201, 53-24-204, MCA
IMP: 53-24-204, 53-24-207, MCA

37.27.115 ALL STATE APPROVED PROGRAMS – ACCEPTANCE OF PERSONS INTO THE TREATMENT PROGRAM (1) remains the same.

(2) The program shall admit and care for only those persons for whom ~~they~~ it can provide care and services appropriate to the person's physical, emotional, and social needs.

~~(3) If a chemically dependent person is not admitted to an approved treatment program for the reason that adequate and appropriate treatment is not available at that program or facility, the administrator shall refer that person to another treatment program at which adequate and appropriate treatment is available.~~

~~(4) Approved chemical dependency treatment programs shall provide services to persons with alcohol and alcohol related problems, or to their families, without regard to source of referral, race, color, creed, national origin, religion, sex, age, or handicap.~~

~~(5)~~(3) ~~An~~ The program shall work together with the client to implement an individualized, written treatment plan ~~specifically tailored to meet the needs of the individual client shall be prepared and~~ that identifies services and supports needed to address problems and needs identified in the biopsychosocial assessment. The treatment plan includes goals, objectives, and strategies. It is maintained on a current basis for each client.

(4) The program shall make appropriate referrals when the client needs services not offered by the program. Referrals must be documented in the client record.

(5) The program shall ensure that clients receiving prescribed medication(s), including medication for opioid use disorder, are not required to discontinue the medication as a condition for receiving services. Access to, and coordination with, qualified medical providers must be made available on-site or through referral.

~~(6) The staff of a program shall develop an appropriate referral plan for the client to effect total and complete recovery and rehabilitation. Staff shall actively assist clients to make contact with alcoholics anonymous, social and welfare agencies, and other treatment programs suitable for follow-up care upon discharge from the program.~~

AUTH: 53-24-209, MCA
IMP: 53-24-209, MCA

37.27.116 ~~ALL PROGRAMS – CLIENTS RIGHTS~~ INDIVIDUAL OUTPATIENT TREATMENT PROVIDERS AND PREVENTION PROVIDERS, CLIENTS RIGHTS (1) ~~All approved chemical dependency treatment programs shall make reasonable efforts to assure the right of each client to~~ Programs approved under ARM 37.27.105 and 37.27.107 that provide treatment (including early intervention) must develop and maintain a client rights policy that supports and protects the state and federal constitutional and statutory rights, including civil rights, of all clients. These must include the right to:

(a) ~~Be treated with respect and dignity.~~ receive treatment free of unlawful discrimination;

(b) ~~Be treated without regard to physical or mental disability unless such disability makes treatment afforded by the facility nonbeneficial or hazardous.~~ receive reasonable accommodations, consistent with federal and state law;

(c) receive treatment in the least restrictive environment, consistent with law, in a manner sensitive to individual needs and which promotes dignity and self-respect;

~~(c)~~(d) ~~Have~~ have all clinical and personal information treated ~~confidentially in communications with individuals not directly associated with the approved chemical dependency treatment program.~~ in accordance with state and federal confidentiality statutes and regulations;

~~(d)~~(e) ~~Be provided reasonable opportunity to~~ practice the religion of ~~his or her~~ the client's choice, ~~alone and in private, insofar as such religious practice does not infringe on the rights and treatment of others, or the treatment program~~ consistent with the Montana Religious Freedom Restoration Act and considering the rights of others and the requirements of the treatment program. The client also has the right to be excused from any religious practice~~.~~;

~~(e) Not be denied communication with family in emergency situations.~~

(f) ~~Not be subjected by program staff to physical, psychological or sexual abuse, corporal punishment, or other forms of abuse administered against their will including being denied food, clothing, or other basic necessities.~~ review their own treatment records in the presence of treatment staff, consistent with 45 CFR 164.524 and other state and federal confidentiality statutes and regulations;

(g) ~~Have services for men and women which reflect an awareness of the special needs of each gender. All residential facilities shall provide equivalent, clearly defined, and well supervised sleeping quarters and bath accommodations for male and female clients.~~ be fully informed of fees charged, including fees for copying records to verify treatment and methods of payment available;

(h) ~~Have access to an established client grievance procedure.~~ be free from abuse, neglect, and financial exploitation by staff members or clients;

(i) have grievances considered in a fair and timely manner, with respect to infringements of rights described in this rule;

(j) be given a 30-day notice in the event of program closure or discontinuation of treatment services;

(k) be provided with a referral to similar treatment services, if available; and

(l) be advised how to access records to which the client is entitled.

(2) The program must inform each client and his or her representative, in an understandable manner, of the rights policy, treatment methods, and rules applicable to the client, at the time of admission or as soon thereafter as the client is capable of rational communication.

(3) The client and staff member reviewing the policy must sign a statement acknowledging the review. The statement must be maintained in the client's record.

(4) The program must post a copy of client rights in a conspicuous place in the facility, accessible to clients and staff members.

AUTH: 53-24-105, 53-24-305, MCA
IMP: 53-24-305, MCA

37.27.120 ALL STATE APPROVED PROGRAMS – ORGANIZATION AND MANAGEMENT (1) The ~~administrative~~ organization and management of all state approved ~~chemical dependency treatment~~ programs shall ensure that:

~~(a) Lines and delegation of authority, responsibilities, structure, and reporting relationships are explicitly stated in writing and delineate all staff positions and functions. Supervision must be clearly demonstrated.~~

~~(b)~~(a) ~~Development and implementation of a policies and procedures manual describing in detail the program services and personnel services and includes all~~ The program has written policies and procedures required by ~~these rules~~ this subchapter.

~~(c) The policy and procedure manual is reviewed and revised as necessary to keep it current.~~

~~(d) The program administrator reports to the governing body at least quarterly on progress toward goals and objectives which contain all of the required effectiveness indicators.~~

~~(e)~~(b) The program will develop and conduct annual program ~~self~~ evaluations ~~and report results to the governing body.~~ or review to assess the quality, appropriateness, and efficacy of treatment services provided. This review should examine the following:

(i) admission criteria/intake process;

(ii) assessments;

(iii) treatment planning;

(iv) documentation of implementation of treatment services;

(v) discharge and continuing care planning; and

(vi) indications of treatment outcomes.

(c) The program will monitor the following treatment outcomes:

(i) demographics;

(ii) no shows;

(iii) wait times;

(iv) abstinence and reduction of the use of substances;

(v) involvement with the criminal justice system;

(vi) stable employment, school, or training;

(vii) housing stability;

(viii) retention in services;

(ix) perception of care;

(x) social connectedness; and

(xi) use of evidence-based practices.

~~(f) Adequate staff to meet client requests for services and professional counseling staff/client ratios are at an acceptable level as determined by the department.~~

~~(g) All clients have individualized treatment plans. These treatment plans shall:~~

~~(i) Be designed to help the client understand and overcome his or her illness.~~

~~(ii) Be the focal point in the documentation of the treatment of the client.~~

~~(iii) provide summary statements of the clients' problems, appropriate realistic goals, and strategies for achieving goals. Goals should be defined as long or short term.~~

~~(iv) Delineate the treatment process.~~

~~(v) Reflect all services provided to the client and itemize the basic purpose of each service.~~

~~(vi) Be reviewed and updated as appropriate for the component.~~

~~(h) That progress notes are maintained on all clients. Progress notes shall:~~

~~(i) Be required to provide documentary evidence of person-to-person services provided to the client.~~

~~(ii) Be used in conjunction with the treatment plan to assess progress made in attaining treatment plan goals and ensure needed modifications. (These may occur as staffing notes.)~~

~~(iii) Relate to the treatment plan, i.e., if a new problem is identified in the note it must also be entered on the plan.~~

~~(iv) Be the primary tool for reviewing clients' progress.~~

~~(v) Include documentation of important events, information, reported third party statements affecting the client and contacts from referral sources.~~

~~(vi) Be written specific to each service component. One of these should be a staffing note.~~

~~(i) A properly completed "authorization for release of information form" which meets all the federal and state requirements is completed for each disclosure of information concerning the client.~~

~~(j) Dimensional admission, continued stay and discharge criteria must be developed for each component to promote the least restrictive level of care and encompass the following dimensions:~~

~~(i) Alcohol and/or drug intoxication and/or potential withdrawal;~~

~~(ii) Physical conditions or complications;~~

~~(iii) Emotional/behavioral conditions and complications;~~

~~(iv) Treatment acceptance/resistance;~~

~~(v) Relapse potential;~~

~~(vi) Recovery environment (support systems);~~

~~(vii) Considerations - two factors must be considered in making treatment placement decisions which override the patient treatment match determined by these criteria:~~

~~(A) prior treatment failure and~~

~~(B) availability of the selected level of care. A treatment failure at any given level of care may indicate the need for treatment at a higher level of care. Note: Nationally recognized samples of dimensional admission, continued stay, and discharge criteria are available at the Department of Public Health and Human Services, Addictive and Mental Disorders Division.~~

~~(k) Security measures are adequate and are in compliance with the confidentiality rules and regulations.~~

~~(l)~~(d) Client records are retained according to the following guidelines:

(i) If a state approved chemical dependency program is receiving public funds through a contract, grant, or written agreement with federal, state, county, or city agencies, records must be retained five years beyond the termination date of said contract, grant, or written agreement. Records shall be retained beyond the five year period if an audit is in process or if any audit findings, ~~litigations~~ lawsuits, or claims involving the records have not been resolved. The retention period for each year's records starts from date of submission of the annual or final report of expenditures (financial status report or equivalent).

(ii) If a state approved program is not receiving public funds (federal, state, county, or city), records must be retained five years beyond the fiscal year end (June 30th) in which that client was most recently discharged from that program. Records shall be retained beyond the five year period if an audit is in process or if any audit findings, ~~litigations~~ lawsuits, or claims involving the records have not been resolved.

~~(m)~~(e) Facilities and offices are clean and well maintained.

~~(n)~~(f) Accounting and fiscal procedures are adopted which ensure financial accountability and meet all federal, state, and county requirements.

~~(o)~~(g) A sliding fee schedule is adopted based on ability to pay for all individuals receiving treatment services provided by state approved ~~chemical dependency~~ programs. (53-24-108(4), MCA).

~~(p)~~(h) ~~They maintain at least $300,000~~ The program maintains general liability insurance and professional liability insurance ~~on all staff providing counseling service and workers' compensation on all personnel~~.

(i) Client records and documentation adhere to requirements described in the BHDD Medicaid Manual and ARM 37.85.414.

(j) Programs participate in quarterly updates with the department to ensure contact information, organizational chart, locations, hours of operation, and services provided are up to date for the public to obtain access to care.

~~(q) Sub-contracts and service agreements include a description of services; basis for payment; total amount of contract; duration of contract; and appropriate signatures of program administration and a representative of the governing body.~~

AUTH: 53-24-204, 53-24-207, 53-24-208, MCA
IMP: 53-24-208, 53-24-209, 53-24-306, MCA

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the ~~Addictive and Mental Disorders~~ Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~April 1 2021~~ October 1, 2022, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, ~~Addictive and Mental Disorders~~ Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: ~~http://dphhs.mt.gov/amdd.aspx~~ https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual.

(3) In addition to the requirements contained in rule, the department has developed and published the ~~Addictive and Mental Disorders~~ BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~July 1, 2020~~ October 1, 2022, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, ~~Addictive and Mental Disorders~~ Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at: ~~http://dphhs.mt.gov/amdd.aspx~~ https://dphhs.mt.gov/amdd/AMDDNonMedicaidServicesProviderManual.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the ~~Addictive and Mental Disorders~~ Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health ~~(Manual)~~, dated ~~April 1, 2021~~ October 1, 2022, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the ~~Manual~~ manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, ~~Addictive and Mental Disorders~~ Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: ~~http://dphhs.mt.gov/amdd.aspx~~ https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual.

(3) Medicaid reimbursement for mental health services will be the lowest of:

(a) remains the same.

(b) the rate established in the department's fee schedule. Reimbursement fees are as provided in ARM 37.85.105~~(5)~~ and 37.85.106~~(2)(c)~~.

(4) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or otherwise not in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

(5) remains the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1411 PURPOSE (1) This subchapter establishes the licensing requirements for ~~acute inpatient chemical dependency facilities, residential inpatient community-based chemical dependency facilities, and low and medium intensity residential halfway house treatment facility services~~ substance use disorder facilities (SUDFs) as outlined in the ASAM Criteria.

~~(2) If the rules in this subchapter conflict with ARM Title 37, chapter 106, subchapter 3, the requirements of this subchapter will apply.~~

~~(3)~~(2) This subchapter is applicable to treatment levels of care classified as ~~ASAM Level~~:

(a) ~~III.1 Clinically Managed Low-Intensity Residential Treatment~~ ASAM 3.7 Medically Monitored Intensive Inpatient Services;

(b) ~~III.3 Clinically Managed Medium-Intensity Residential Treatment~~ ASAM 3.7-WM Medically Monitored Withdrawal Management Services;

(c) ~~III.5 Clinically Managed High-Intensity Residential Treatment; and~~ ASAM 3.5 Clinically Managed High Intensity (adult) and Medium Intensity (adolescent) Residential Services;

(d) ~~III.7 Medically Monitored Inpatient Treatment.~~ ASAM 3.3 Clinically Managed Population-Specific High Intensity (adult only) Residential Services;

(e) ASAM 3.2-WM Clinically Managed Residential Withdrawal Management Services;

(f) ASAM 3.1 Clinically Managed Low Intensity (adult or adolescent) Residential Services;

(g) ASAM 2.5 Partial Hospitalization Services; and

(h) Outpatient Substance Use Disorder Facility.

~~(4) Title 37, chapter 106, subchapter 14 are applicable to all community-based substance use disorder inpatient and residential halfway house treatment facilities.~~

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

37.106.1413 DEFINITIONS In addition to the terms defined in 53-24-103, MCA, the following definitions shall apply in the interpretation and enforcement of the rules in this subchapter:

(1) "Administrator" means the person in charge, care, or control ~~of treatment and responsible for operation of the agency providing such services~~ of the substance use disorder facility (SUDF).

(2) "Admission" means specific tasks necessary to admit a person to ~~community-based substance use disorder treatment services. Tasks include but are not limited to~~ a SUDF~~:~~.

~~(a) completion of admission forms;~~

~~(b) notification of client rights and confidentiality regulations;~~

~~(c) explanation of the general nature and goals of services;~~

~~(d) review of the intake policies and procedures of the service program;~~

~~(e) orientation to the service structure; and~~

~~(f) financial determination for services.~~

(3) "Adolescent" means a person 17 years of age or younger for purposes of receiving services in a SUDF. Persons 18, 19, and 20 may be defined as an adolescent if enrolled in accredited secondary school and the client assessment completed by a LAC or mental health professional determines their appropriateness for adolescent treatment.

~~(3)~~(4) "Adult" means a person ~~21~~ 18 years of age or older for purposes of receiving services in ~~community-based substance use disorder inpatient and residential halfway house treatment~~ a SUDF.

~~(4) "American Society of Addiction Medicine Patient Placement Criteria 2R (ASAM PPC-2R) or (ASAM)" establishes the level of care for substance use disorder treatment and is required to be used by all licensed community-based substance use disorder inpatient and residential halfway house treatment facility providers. The department adopts and incorporates by reference the American Society of Addiction Medicine Patient Placement Criteria, Second Edition-Revised; Copyright 2001 by the American Society of Addiction Medicine, Inc.; ISBN 1-880425-06-8, which sets forth the level of care for substance use disorder treatment. A copy of ASAM PPC-2R may be obtained from American Society of Addiction Medicine, 4601 N. Park Avenue, Upper Arcade #101, Chevy Chase, MD 20815; phone (301) 656-3920; fax (301) 656 3815; or email@asam.org.~~

(5) "American Society of Addiction Medicine (ASAM) Criteria" means guidelines for placement, continued stay, and transfer/discharge of individuals with addiction and co-occurring conditions, developed by the American Society of Addiction Medicine.

~~(5)~~(6) "Biopsychosocial assessment" means ~~an~~ a comprehensive multidimensional assessment ~~of a person's medical (biological), psychological, and social history based on the six dimensions of ASAM.~~ that includes risk ratings, addresses immediate needs, is organized in accordance with the six dimensions as described in the ASAM Criteria, and includes the following: ~~The six assessment dimensions include:~~

~~(a) acute intoxication and/or withdrawal potential;~~

~~(b) biomedical conditions and complications;~~

~~(c) emotional, behavioral, or cognitive conditions and complications;~~

~~(d) readiness to change;~~

~~(e) relapse, continued use or continued problem potential; and~~

~~(f) recovery/living environment.~~

(a) presenting problem(s) and history of problem(s);

(b) family history;

(c) developmental history (including pregnancy, developmental milestones, temperament);

(d) substance use history;

(e) personal/social history;

(f) legal history;

(g) psychiatric history;

(h) medical history;

(i) spiritual history;

(j) diagnostic interview and mental status examination;

(k) physical health impressions;

(l) diagnostic impressions;

(m) needs, strengths, skills, and resources in each dimension; and

(n) treatment recommendations.

~~(6) "Child or adolescent" means a person under 21 years of age for purposes of services in community-based substance use disorder inpatient and residential halfway house treatment.~~

~~(7) "Client" means a person being treated for a substance use disorder who is formally admitted to services within the admission criteria set by the program.~~

(7) "Care management" means the management and coordination of services to meet individual treatment needs of a client and includes:

(a) conducting a needs assessment;

(b) developing, implementing, revising, or monitoring the care plan;

(c) facilitating and coordinating treatment and services among other professionals and agencies; and

(d) continuity of care provided by a designated member of the treatment team.

~~(8) "Confidentiality" means a program requirement concerning client information, including client records. The disclosure of any information related to an individual client shall be governed by requirements of the Health Insurance~~

~~Portability and Accountability Act of 1996 (HIPAA) and the requirements of Title 42 Part 2.22 (a)(1) and (2) of the Code of Federal Regulations (CFR).~~

(8) "Care manager" means a designated staff member on the care team that delivers care management services to clients and works directly with each client to ensure they receive the right care at the right time by coordinating services and referrals and tracking clinical outcomes.

(9) "Clinical director" means a Licensed Addiction Counselor, Licensed Clinical Social Worker, Licensed Clinical Professional Counselor, Licensed Marriage Family Therapist, or Clinical Psychologist responsible for the supervision and provision of skilled treatment services provided in a substance use disorder facility. The clinical director cannot be a licensure candidate.

~~(9)~~(10) "Continuing care plan" means a provision of the treatment ~~written~~ plan outlining anticipated ~~therapeutic~~ interventions ~~to move a client along the continuum of care, which may include the level of treatment, clinical needs, and rationale for moving from one level of care to another~~ needed at the time of discharge or transfer to another level of care.

~~(10)~~(11) "Co-occurring" means an individual ~~has~~ that is diagnosed with at least one mental health disorder ~~and~~ along with a substance use disorder.

(12) "Critical population" means an individual who may be in need of additional services and is a priority admission to a SUDF in the following order of priority:

(a) pregnant injecting drug users;

(b) pregnant substance abusers;

(c) injecting drug users;

(d) individuals infected with the etiologic agent for acquired immune deficiency, Hepatitis B and/or C, tuberculosis (TB),or any sexually transmitted infection; and

(e) women with dependent children.

~~(11) "Detoxification (detox)" means care and treatment of a person while the person recovers from the transitory effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.~~

~~(12)~~(13) "Diagnostic and Statistical Manual of Mental Disorders ~~(DSM-IV) or~~ (DSM)" means the American Psychiatric Association's classification of mental disorders manual. The DSM is the standard reference for clinical practice in the mental health field. ~~establishes criteria for diagnosing an individual with a substance use or dependence disorder and is published by the American Psychiatric Association. The department adopts and incorporates by reference the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), Fourth Edition, (ISBN 0-89042-061-0 (hardback) or ISBN 0-89042-062-9 (paperback), which sets forth criteria for diagnosing an individual with a substance use or dependence disorder. A copy of the DSM-IV may be obtained from American Psychiatric Publishing, Inc., 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209; phone (703) 907-7322 or (800) 368-5777; fax (703) 907-1091; or e-mail appi@psych.org.~~

(14) "Direct care" means the provision of providing awake supervision, treatment, or services to clients in a SUDF.

~~(13) "Dual diagnosis capable (DDC)" means treatment programs address co-occurring mental and substance-related disorders in their policies and procedures,~~

~~assessment, treatment planning, program content, and discharge planning are described as "dual diagnosis capable". Such programs have arrangements in place for coordination and collaboration with mental health services. They also can provide psychopharmacologic monitoring and psychological assessment and consultation, either on-site or through coordination consultation with off-site providers. Program staff is able to address the interaction between mental and substance-related disorders and their effect on the patient's readiness to change, as well as relapse and recovery environment issues, through individual and group content. Nevertheless, the primary focus of DDC programs is the treatment of substance-related disorders.~~

~~(14) "Dual diagnosis enhanced (DDE)" describes treatment programs that incorporate policies, procedures, assessments, treatment, and discharge planning processes that accommodate patients who have co-occurring mental and substance-related disorders. Mental health symptom management groups are incorporated into addiction treatment. Motivational enhancement therapies specifically designed for those with co-occurring mental and substance-related disorders are more likely available (particularly in outpatient settings) and, ideally, there is close collaboration or integration with a mental health program that provides crises back-up services and access to mental health case management and continuing care. In contrast to dual diagnosis capable services, dual diagnosis enhanced services place their primary focus on the integration of services for mental and substance-related disorders in their staffing, services, and program content.~~

~~(15) "Eligible licensed addiction counselor (ELAC)" means an individual who meets requirements set forth in 37-35-202, MCA, and ARM 24.154.407 to provide addiction counseling services under supervision of a licensed addiction counselor. References in this subchapter to licensed addiction counselor or LAC include an eligible licensed addiction counselor or ELAC providing addiction counseling services within the scope of this supervision.~~

~~(16) "First aid" means emergency treatment by someone who has received appropriate training. The provider and all staff who provide or supervise client care must complete required training and hold current certification in first aid and cardiopulmonary resuscitation (CPR).~~

~~(17) "Halfway house" means a community residential facility for treatment of substance use disorders.~~

(15) "Educational group" means structured service provided in a group setting designed to educate clients about substance abuse and the consequences of substance abuse. It may be provided by rehabilitation aides or other direct care staff.

(16) "Guardian" means a person appointed by a court to make medical, and possibly financial, decisions as provided in Title 72, chapter 5, MCA.

(17) "Individualized treatment plan" means a written document as described in ARM 37.106.1440, identifying the client's medical needs, clinical needs, goals, objectives, and interventions.

(18) "Interdisciplinary team" means a group of licensed or certified individuals trained in different professions, disciplines, or service areas who function interactively and interdependently in conducting a client's biopsychosocial assessment, individualized treatment plan, and treatment services.

~~(18)~~(19) "Licensed addiction counselor (LAC)" means an individual who meets the requirements set forth in 37-35-202, MCA, and ARM Title 24, chapter 154, rules implementing 37-35-202, MCA, to provide addiction counseling.

~~(19) "Licensure bureau" means the area of the department responsible for licensing chemical dependency facilities.~~

(20) "Medical director" means a physician, licensed under requirements set forth in Title 37, chapter 3, MCA, who establishes and oversees written protocols for the provision of medical services and medication management provided in a medically monitored inpatient substance use disorder residential facility.

(20) remains the same, but is renumbered (21).

(22) "Mental health professional" means a clinical psychologist, licensed clinical social worker (LCSW), licensed clinical professional counselor (LCPC), and licensed marriage and family therapist (LMFT), licensed under requirements pursuant to Title 37, chapters 17, 22, 23, or 37, MCA; or a social worker licensure candidate; professional counselor licensure candidate; or marriage and family therapist licensure candidate, registered under requirements pursuant to Title 37, chapters 22, 23, or 37, MCA. Mental health professionals cannot assume the role of care manager.

(23) "Nurse practitioner" means a person licensed under Title 37, chapter 8, MCA.

(21) remains the same, but is renumbered (24).

~~(22) "Program" means a community-based substance use disorder inpatient and residential facility.~~

(25) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of the free movement of an individual's arms, legs, or head. The term does not include physical escort. Physical restraint may be imposed only in emergency circumstances and only to ensure the immediate physical safety of the adolescent, a staff member, or others, when less restrictive interventions have been determined to be ineffective.

(26) "Physician" means a person licensed under requirements pursuant to Title 37, chapter 3, MCA.

(27) "Physician assistant" means a person licensed under requirements pursuant to Title 37, chapter 20, MCA.

(28) "Progress note" means a written record of a treatment session or service contact. It is individualized to each client for each separate session or service, and includes the following:

(a) date, time in/time out, and duration of session;

(b) participant names;

(c) type and summary of session or service;

(d) client's participation;

(e) documentation of measurable progress toward ITP goals and objectives;

(f) the name and signature (with date of completion) of the staff member providing the session or service; and

(g) documentation in the client's file within seven days of the treatment session or service contact, or there must be documentation why this did not occur.

(29) "Psychosocial rehabilitation" means a service that includes assisting adults with restoring skills related to exhibiting appropriate behavior and living with greater independence and personal choice. Services maximize the skills needed to function in the home, workplace, and community setting. Services can be provided by a rehabilitation aide.

(30) "Recovery residence" means a substance-free living environment that supports individuals in recovery from substance use disorders. Recovery residences do not provide clinical services and are excluded from licensure by the department.

(31) "Registered nurse" means a person licensed under requirements pursuant to Title 37, chapter 8, MCA.

(32) "Rehabilitation aide" means a staff member of the SUDF who provides direct services to clients. Rehabilitation aides can provide psychosocial rehabilitation services under the supervision of the LAC or mental health professional staff and has documentation of training in the service provided. Rehabilitation aides must have a minimum of a high school diploma, high school equivalency test (HiSET), or general equivalency diploma (GED).

(33) "Self-administration assistance" means providing necessary assistance to any resident in taking their medication, including:

(a) removing medication containers from secured storage;

(b) providing verbal suggestions, prompting, reminding, gesturing, or providing a written guide for self-administrating medications;

(c) handing a prefilled, labeled medication holder, labeled unit dose container, syringe or original marked, labeled container from the pharmacy, or a medication organizer as described in ARM 37.106.2848 to the resident;

(d) opening the lid of the marked, labeled container for the resident;

(e) guiding the hand of the resident to self-administer the medication;

(f) holding and assisting the resident in drinking fluid to assist in the swallowing of oral medications; and

(g) assisting with removal of a medication from a container for residents with a physical disability which prevents independence in the act.

(34) "Serious incident" means any one of the following events that occurs at the facility or while participating in a facility activity:

(a) death;

(b) suicide attempt;

(c) known or suspected abuse, neglect, or exploitation of a client;

(d) physical or sexual assault;

(e) use of physical force or restraints;

(f) event that causes or contributes to serious injury, illness, or death of any person or poses a serious risk to the health, safety, or welfare of any person;

(g) serious physical plant damage;

(h) a severe weather event that presents a substantial threat to facility operation or client safety;

(i) bomb threat; and

(j) alleged unlawful conduct or criminal activity.

(35) "Skilled treatment services" means structured services such as individual and group counseling, medication management, family therapy,

educational groups, psychosocial rehabilitation, occupational and recreational therapy, and other therapies provided to the client. Skilled treatment services do not include attendance at self/mutual help meetings, volunteer activities, or homework assignments such as watching videos, journaling, and workbooks.

(36) "Staff member" means a person that provides any type of service in the SUDF and is either employed, contracted, a volunteer, or participating in a trainee/intern program.

(37) "Substance use disorder" means chemical dependency, as defined in 53-24-103, MCA.

(38) "Substance use disorder facility (SUDF)" means a chemical dependency facility, as defined in 50-5-101, MCA.

~~(23) "Treatment plan" means a written document identifying the clinical needs, goals, objectives, and interventions the client agrees to follow to help the client understand and meet these treatment objectives.~~

(39) "Treatment plan review" means clinical review of the client's progress in treatment and determination of whether the client meets the continuing, transfer, or discharge criteria outlined in the ASAM Criteria for the current level of care.

(40) "Withdrawal management" means services required for dimension one in the ASAM Criteria; acute intoxication and/or withdrawal potential.

AUTH: 50-5-103, 53-24-208, 53-24-301, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

37.106.1415 APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter shall apply to a ~~chemical dependency~~ substance use disorder facility.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

37.106.1420 POLICY AND PROCEDURE MANUAL REQUIREMENTS

(1) Each ~~service provider~~ substance use disorder facility (SUDF) must develop and implement a policy and procedure manual that includes:

(a) the philosophy of the ~~program~~ SUDF;

(b) the ~~program~~ SUDF goals;

(c) a description of the population the ~~facility is able~~ SUDF intends to serve;

~~(d) procedures governing the treatment and care of adolescents, if served in the program;~~

~~(e)~~(d) a delineation of ~~all of~~ the services to be provided;

(e) screening procedures for all referrals;

~~(f) identification or a description of critical populations and mechanisms to address their needs;~~

~~(g)~~(f) admission criteria which ~~shall include at a minimum:~~ includes addressing priority admission protocols for critical populations;

~~(i) how admissions will be prioritized;~~

~~(ii)~~(g) program limitations and exclusions;

~~(iii)~~(h) methods to be followed when a person is found ineligible for services including active referral to a level of care deemed appropriate through the biopsychosocial assessment; ~~and~~

~~(iv)~~(i) steps to follow for a wait list that includes ~~how interim will be provided when appropriate~~ unique client identifiers, referrals to other treatment facilities, and removing clients only when they cannot be located or refuse treatment;

~~(h)~~(j) procedures outlining how facilities and services ~~shall~~ must provide for privacy and separation by ~~gender~~ sex;

~~(i) organizational chart showing:~~

~~(i) the lines and delegation of authority with supervisory responsibility clearly identified; and~~

~~(ii) responsibilities, structure, and reporting relationships explicitly stated and all staff positions delineated and functions identified.~~

~~(j) implementation process of state and federal regulations on client confidentiality, including at a minimum:~~

~~(i) providing written summary and verbal confidentiality notification at the time of admission or as soon thereafter as the client is capable of rational communication. The minimum required elements of the written summary must include but are not limited to the following:~~

~~(A) a general description of the limited circumstances under which a program may acknowledge that an individual is present at a facility or disclose outside the program information identifying a patient as an alcohol or drug abuser;~~

~~(B) a statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected; and~~

~~(C) a statement that reports of suspected child abuse or neglect made under state law to appropriate state or local authorities are not protected.~~

~~(k) a client grievance process;~~

~~(l) reporting requirements to notify the department within 24 hours by e-mail or fax; of a client, staff, volunteer, or visitor death where the death occurs on-site or in service related activities;~~

~~(m) reporting requirements to notify the department within 24 hours or next business day of any fire, accident, or other incident resulting in significant damage to the service site;~~

~~(n) reporting any suspected abuse or neglect in accordance with 41-3-201 or 52-3-811, MCA, to the state child abuse hotline at (866) 820-5437;~~

~~(o) notification of the department's licensing bureau in writing within 24 hours of any allegations of client abuse including child abuse or neglect and elder abuse or neglect:~~

~~(i) the provider must indicate in writing that the proper authorities have been contacted and the abuse or neglect reported.~~

~~(p)~~(k) steps to ensure smoking is not permitted, as required under ~~per~~ the Montana Clean Indoor Air Act;

~~(q)~~(l) the management, storage, and disposal of prescription and over the counter drugs if applicable~~; and~~ as stated in [NEW RULE XI];

~~(r)~~(m) client transportation~~, if provided by facility.~~;

(n) drug and alcohol laboratory testing methods, collection, and storage procedures, including:

(i) how testing is used as part of a non-punitive therapeutic process including how the use of testing and results become part of the client's treatment plan; and

(ii) process addressing client refusal to submit for laboratory testing or drug and alcohol screening and confirmation testing;

(o) arranging for medical and mental health services when clinically indicated in the biopsychosocial assessment or treatment plan reviews for all clients and within 48 hours of admission for critical populations;

(p) screening clients for critical populations at the time of admission;

(q) limitations and requirements of group counseling sessions to include client/staff member ratio, appropriate for the level of care being rendered;

(r) provision of services to family members and significant others;

(s) medical emergencies;

(t) youth program policies in [NEW RULE X]; and

(u) any additional policy and procedures as required by this subchapter.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-207, 53-24-208, 53-24-306, 76-2-411, MCA

37.106.1425 ~~AGENCY ADMINISTRATOR RESPONSIBILITIES~~ GOVERNANCE AND ADMINISTRATION (1) ~~The agency administrator is responsible for and must be familiar with daily operation of the facility~~ The substance use disorder facility (SUDF) must establish a governing body with responsibility for operating and maintaining the SUDF.

(2) The governing body must provide organizational oversight to ensure that adequate resources are available to ensure staff members provide safe and adequate care.

(3) The governing body must establish written policies and procedures that:

(a) govern the organization and functions of the SUDF;

(b) establish procedures for selecting and periodically evaluating a qualified administrator to ensure the administrator carries out the goals and policies of the governing body;

(c) implement all state and federal requirements;

(d) establish accounting and fiscal procedures;

(e) describe how updates and changes are reviewed with and implemented by staff member(s); and

(f) include annual review of the quality improvement report by the governing body.

(4) Each SUDF must have an administrator that is responsible for, and must be familiar with the daily operation of, the SUDF.

(5) The administrator must;

(a) be qualified through appropriate knowledge, experience, and capabilities to supervise and administer the services properly;

(b) be available, or ensure a designated alternate who has similar qualifications is available, to carry out the goals, objectives, and standards of the governing body and to implement the rules of this subchapter; and

(c) review progress on the quality improvement plan with the governing body on a quarterly basis.

(6) The SUDF must maintain professional liability and general liability insurance.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-301, MCA

37.106.1430 ~~REQUIREMENTS FOR THE~~ PERSONNEL POLICY MANUAL REQUIREMENTS (1) The ~~program shall~~ substance use disorder facility (SUDF) must have a written ~~personal policies~~ personnel policy manual which includes ~~including~~ the following:

(a) ~~selection, training, and supervision of all personnel~~ screening and hiring procedures for all applicants including criminal and protective service history disqualifiers the SUDF uses in making an employment fitness determination;

(b) ~~maintaining a current job description for each position. For contract staff, formal agreements or personnel contracts, which describe the nature and extent of client care services, may be substituted for job descriptions~~ job qualifications for each position;

(c) ~~maintaining a process governing volunteer (if utilized) activities and establishing appropriate training requirements~~ job descriptions or contract agreements which describe the nature and extent of client care services of each position;

(d) ~~assuring annual performance reviews for all staff~~ organizational chart including the supervisory structure;

(e) ~~actions to be taken if staff members misuse alcohol or other drugs~~ process for conducting staff member performance evaluations;

(f) ~~assuring staff orientation prior to assumption of duties including but not limited to:~~ actions to be taken if staff members misuse alcohol or other drugs;

~~(i)~~(g) defining staff member ethical standards of ~~and~~ conduct, including reporting of unprofessional conduct to appropriate authorities;

~~(ii)~~(h) staff member grievance procedures; and

~~(iii) the facility disaster/evacuation plan;~~

~~(iv) review of policy and procedure manual; and~~

~~(v) review of client rights as defined in ARM 37.106.1450.~~

(i) trainee/intern or volunteer requirements as required in ARM 37.106.1435.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, MCA

37.106.1432 PERSONNEL FILE REQUIREMENTS (1) The ~~administrator or designee~~ substance use disorder facility (SUDF) must ~~ensure there is~~ maintain a current secured personnel file for each ~~employee and trainee and for each student, volunteer, and contract staff person who provides or supervises client care~~ staff member. The file must include:

~~(a) the results of a tuberculin test upon employment and annually thereafter;~~

~~(b)~~(a) a criminal ~~justice information network (CJIN)~~ history background information check ~~on each staff person having direct contact with clients~~;

(b) a Montana Child Protective Services check for SUDFs serving or housing adolescents;

(c) ~~evidence that all staff who provide or supervise client care have current and valid certification in cardio-pulmonary resuscitation (CPR) and in first aid techniques~~ documentation of all required orientation and ongoing training;

(d) an annual performance review ~~that is:~~ signed and dated by the staff member and supervisor;

~~(i) conducted by the appropriate supervisor of each staff member; and~~

~~(ii) signed and dated by the employee and supervisor.~~

(e) copies of ~~registration~~ certification or licensure ~~applicable to employee's job duties~~ documents necessary for the staff member's position and/or title;

(f) evidence of an independent contractor status and contractual agreements for contracted ~~personal~~ staff members;

(g) a signed statement acknowledging the ~~employee~~ staff member has been oriented and agrees to abide by all confidentiality requirements ~~to maintain confidentiality of client information~~;

(h) and (i) remain the same.

(j) a copy of a current job description~~, signed and dated by the employee and supervisor~~ which includes:

(i) through (iii) remain the same.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, MCA

37.106.1435 ~~REQUIREMENTS FOR TRAINING OR VOLUNTEER PROGRAMS~~ TRAINEES/INTERNS OR VOLUNTEER REQUIREMENTS (1) If ~~programs~~ the substance use disorder facility (SUDF) participates in a trainee/intern practicum or ~~have~~ has volunteers, they must have the following:

(a) policies and practices assuring the safety of clients;

(b) a description of the ~~program~~ training/volunteer work to be provided at the SUDF and any limitations;

(c) a description of how supervision of the trainees/interns or volunteers will be provided;

(d) policies and ~~practices~~ procedures to ~~assure~~ ensure trainee/interns or volunteers meet the qualifications of the position to which the person is assigned; and

(e) a written agreement with each educational institution using the ~~treatment agency~~ SUDF as a setting for student practice, ~~to include~~ including ~~but not limited to~~:

(i) a description of the nature and scope of student activity at the ~~treatment settings; and~~ SUDF.

~~(ii) a plan for supervision of student activities.~~

(2) Volunteers must not be part of client/staff ratios or provide unsupervised direct care to clients.

(3) Volunteers must meet the requirements of ARM 37.106.1432(1)(a), (b), (c).

(4) For purposes of this subchapter, trainees/interns are considered to be a staff member of the SUDF.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, MCA

37.106.1440 CLINICAL REQUIREMENTS ~~(1) At a minimum, the program is required to have written policies and procedures including supporting evidence of implementation on each of the following areas:~~

~~(a) staffing requirements to include assurance there is an identified clinical supervisor who is a licensed addiction counselor and oversees the implementation of services to assure quality and appropriateness of care rendered to clients;~~

~~(b) critical population requirements to include how pregnant woman resources and referral options will be made available so staff can make referrals as indicated by client needs including:~~

~~(i) ensuring a pregnant woman who is not seen by a private physician, physician assistant-certified, nurse practitioner, or advanced practice registered nurse is referred to one of these providers for determination of prenatal care needs; and~~

~~(ii) discussing pregnancy specific issues and resources.~~

~~(c) therapy service requirements to include but not limited to:~~

~~(i) ensuring utilization of the DSM and the ASAM admission, continued stay, and discharge criteria for patient placement decisions in the initial and the ongoing assessment of the client throughout the course of treatment;~~

~~(ii) ensuring a person needing detoxification will be immediately referred to a detoxification provider, if available, unless the person needs acute care in a hospital; and~~

~~(iii) limitations and requirements of group counseling sessions to include client/staff appropriate for the level of care being rendered.~~

~~(d) clinical policies addressing:~~

~~(i) the assignment of work to a client by a licensed addiction counselor when the assignment is part of the treatment program and has therapeutic value;~~

~~(ii) the use of self-help groups;~~

~~(iii) arranging for medical consultation when clinically needed;~~

~~(iv) arranging for psychiatric consultation when clinically indicated;~~

~~(v) how laboratory testing is to be done including but not limited to:~~

~~(A) testing methods (urine, saliva, blood, breath, etc.); and~~

~~(B) collection and storage.~~

~~(vi) how drug and alcohol screening testing is to be done including but not limited to:~~

~~(A) a guide how testing is used as part of the therapeutic process in a nonpunitive manner;~~

~~(B) requirements to ensure the use of drug testing becomes part of the clients treatment plan; and~~

~~(C) client refusal to submit for testing and confirmation testing.~~

~~(e) policies addressing a facility's ability to provide dual diagnosis services to include at a minimum the following:~~

~~(i) mental health screening; and~~

~~(ii) procedures to assure mental health treatment if identified as a co-occurring client.~~

~~(f) a description of services showing there are arrangements in place for coordination and collaboration to provide services with the following, at a minimum, if not provided on-site:~~

~~(i) mental health services;~~

~~(ii) pregnancy services;~~

~~(iii) human immunodeficiency virus (HIV)/acquired immune deficiency syndrome (AIDS) services;~~

~~(iv) tuberculosis (TB) services;~~

~~(v) Hepatitis B and C services; and~~

~~(vi) sexually transmitted diseases treatment services.~~

~~(g) case management services policies and procedures provided in conjunction with or as part of the client's substance use disorder treatment and recovery;~~

~~(h) treatment planning process policies and procedures including but not limited to:~~

~~(i) how a treatment plan will be jointly developed with the client and the staff who has responsibility for the client;~~

~~(ii) assurance the treatment plan is initiated by the third contact visit for outpatient services and within three days of admission for residential services;~~

~~(iii) a provision for review and signature by the client and the staff person providing treatment services to the client;~~

~~(iv) documentation of regular reviews of the treatment plan with the client in the progress notes;~~

~~(v) having measurable objectives and therapeutic interventions with target dates appropriate to the client's clinical needs;~~

~~(vi) the clinical problems identified in the client's biopsychosocial assessment;~~

~~(vii) when clinically appropriate, implementing a targeted case management plan;~~

~~(viii) the engagement or disengagement and documentation of family members and significant others involvement and participation in the treatment process including but not limited to:~~

~~(A) offering family sessions and regularly scheduled group and educational activities for family members and significant others; and~~

~~(B) how clinical decisions are made and documented regarding the need to involve or not to involve the family and significant others in the treatment process.~~

~~(ix) how the facility will conduct reviews as part of a multidisciplinary staffing and how documentation in the client record will reflect all staff who participated in the review;~~

~~(x) documenting patient response to treatment and achievement of the treatment plan objectives in the progress notes; and~~

~~(xi) a policy to assure the client has a continuing care plan prior to discharge which at a minimum addresses:~~

~~(A) support group recommendations;~~

~~(B) continuing care service provider's contact name, contact number, and initial appointment;~~

~~(C) healthcare and/or medication follow-up; and~~

~~(D) goals for continuing care.~~

(1) Each client must have an individualized treatment plan (ITP) developed by an interdisciplinary treatment team.

(2) ITPs must include:

(a) the client's name, diagnoses, treatment plan date, and treatment plan review dates;

(b) the names of treatment team members who are involved in the client's treatment;

(c) the individualized client strengths;

(d) the problem area(s) that will be the focus of treatment to include symptoms, behaviors, and/or functional impairments;

(e) the treatment goals, objectives, and interventions that are person centered and recovery oriented;

(f) the description of the type, duration, and frequency of the intervention(s) and services(s);

(g) expected dates of completion;

(h) an educational plan for youth; and

(i) the client's level of functioning that will indicate when a service is no longer required.

(3) ITPs and treatment plan reviews must be completed with the client and include the client's legal guardian and at least one qualified licensed professional. The treatment plan and treatment plan reviews must be signed and dated by interdisciplinary team members, the client, and the client's legal guardian (if applicable).

(a) Additional service providers must be contacted and encouraged to participate as clinically indicated.

(4) ITPs must be completed within:

(a) 24 hours of admission for ASAM 3.7, 3.7-WM and 3.2-WM;

(b) 48 hours of admission for ASAM 3.5;

(c) seven days of admission for ASAM 3.3 and 3.1; and

(d) five contacts or 21 days from the first contact, whichever is later, for outpatient facilities.

(5) Treatment plan reviews must be completed:

(a) every three days from the admission date for ASAM 3.7, 3.7-WM and 3.2-WM.

(b) every seven days from the admission date for ASAM 3.5;

(c) every 30 days from the admission date for ASAM 3.1;

(d) every 14 days for from the admission date for ASAM 2.5; and

(e) every 90 days from the admission date for outpatient facilities.

(6) Treatment plan reviews must include:

(a) documentation regarding the client's response to treatment;

(b) review of the client's progress in all six dimensions; and

(c) progress towards goals and objectives that result in either an amended ITP or a statement of the continued appropriateness of the existing plan.

(7) A continuing care plan must be given to the client and, if applicable, the client's legal guardian/parent, representative or guardian at the time of discharge and must include, if applicable:

(a) client's name, date of birth, admission and discharge dates, and reason for placement and discharge;

(b) a written summary of services provided, including the client's participation and progress in the SUDF, contact information of licensed health care providers who conducted evaluations and treatment, and condition of the client at the time of discharge;

(c) goals for continuing care and recovery;

(d) community substance use treatment provider's contact name, contact number, and time and date of an initial appointment;

(e) health care follow-up including provider's contact name, contact number, and initial appointment (if necessary);

(f) current medications, dosage taken, number of times per day, and name of prescribing licensed health care professional;

(g) name and contact number of the client's recovery supports;

(h) housing and employment plan;

(i) medical, dental, and psychiatric care received during placement;

(j) adolescent's educational status (if applicable); and

(k) signature of the client and of the staff member who prepared the plan.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-207, 53-24-208, 76-2-411, MCA

37.106.1450 CLIENT RIGHTS ~~POLICIES AND PROCEDURES~~ (1) ~~At a minimum the program is required to have written policies and procedures including supporting evidence of implementation of each of the following items~~ The substance use disorder residential facility (SUDF) must develop and maintain a client rights policy that supports and protects the state and federal constitutional and statutory rights, including civil rights, of all clients. These must include the right to:

(a) ~~clients are admitted to treatment without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability, except for bona fide program criteria~~ receive treatment free of unlawful discrimination;

(b) ~~clients are reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences~~ receive reasonable accommodations, consistent with federal and state law;

(c) ~~clients are treated in a manner sensitive to individual needs and which promote dignity and self-respect~~ receive treatment in the least restrictive environment, consistent with law, in a manner sensitive to individual needs and which promotes dignity and self-respect;

(d) ~~all~~ have clinical and personal information ~~is~~ treated in accordance with state and federal statutes and ~~confidentiality~~ regulations;

(e) ~~clients have~~ the opportunity to review their own treatment records in the presence of the administrator or designee, consistent with 45 CFR 164.524 and other state and federal confidentiality statutes and regulations;

(f) ~~clients are~~ be fully informed of fees charged, including fees for copying records to verify treatment and methods of payment available;

(g) ~~clients are protected~~ be free from abuse, neglect, ~~harassment,~~ and financial exploitation by staff members or ~~from other~~ clients ~~who are on agency premises~~;

(h) ~~clients will receive a copy of client grievance procedures describing the submission and disposition of complaints by client and right to appeal without threat of reprisal~~ have grievances considered in a fair and timely manner, with respect to infringements of rights described in this rule;

~~(i) client consent must be obtained for each release of information to any other person or entity. This consent for release of information must include:~~

~~(i) name of the consenting client;~~

~~(ii) name or designation of the provider authorized to make the disclosure;~~

~~(iii) name of the person or organization to whom the information is to be released;~~

~~(iv) nature and limits of the information to be released;~~

~~(v) purpose of the disclosure, as specific as possible;~~

~~(vi) specification of the date or event on which the consent expires;~~

~~(vii) statement that the consent can be revoked at any time, except to the extent that action has been taken in reliance on it;~~

~~(viii) signature of the client or parent, guardian, or authorized representative, when required, and the date; and~~

~~(ix) a statement prohibiting further disclosure unless expressly permitted by the written consent of the person to whom it pertains.~~

~~(j) in the event of a program closure or treatment service cancellation, each client must be:~~

~~(i) given 30 days notice;~~

~~(ii) assisted with relocation into similar treatment services;~~

~~(iii) given refunds to which the person is entitled; and~~

~~(iv) advised how to access records to which the person is entitled.~~

~~(k) the provider must post a copy of clients' rights in a conspicuous place in the facility accessible to clients and staff; and~~

(i) educational services provided to adolescents within inpatient/residential settings in accordance with Montana state law;

~~(l)~~(j) client orientation to ~~program~~ SUDF rules, responsibilities, and any sanctions that may be imposed for failure to comply with the ~~program's~~ SUDF rules~~.~~;

(k) reasonable visitation and access to telephone communication within inpatient/residential settings;

(l) send and receive mail within inpatient/residential settings;

(m) regular physical exercise several times per week within inpatient/residential settings; and

(n) be given a 30-day notice in the event of a SUDF closure or treatment service cancellation and:

(i) provided assistance with relocation into similar treatment services, if available;

(ii) be given refunds to which the client is entitled; and

(iii) be advised how to access records to which the client is entitled.

(2) The SUDF must inform each client and his or her representative, in an understandable manner, of the rights policy, treatment methods, and rules applicable to the client, at the time of admission or as soon thereafter as the client is capable of rational communication.

(3) The client and staff member reviewing the policy must sign a statement acknowledging the review. The statement must be maintained in the client's record.

(4) The SUDF must post a copy of clients' rights in a conspicuous place in the facility accessible to clients and staff members.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-306, 76-2-411, MCA

37.106.1452 CLIENT RECORD MAINTENANCE AND SYSTEM REQUIREMENTS (1) Each ~~service provider~~ substance use disorder facility (SUDF) must have a comprehensive secure client record system maintained in ~~accord~~ accordance with 42 CFR Part 2. ~~recognized principles of health record management. The service provider must ensure:~~

~~(a) a designated individual is responsible for the record system;~~

~~(b) a secure storage system which protects active and inactive files from damage;~~

~~(c) client record policies and procedures addressing:~~

~~(i) who has access to records;~~

~~(ii) content of active and inactive client records;~~

~~(iii) a systematic method of identifying and filing individual client records so each can be readily retrieved;~~

~~(iv) assurance each client record is complete and authenticated by the person providing the observation, evaluation, or service;~~

~~(v) retention of client records for a minimum of six years three months after the discharge or transfer of the client; and~~

~~(vi) procedures for destruction of client records.~~

~~(d) procedures for maintaining electronic client records (if applicable).~~

(2) Each SUDF must have written procedures which regulate and control access to and use of client records.

~~(2)~~(3) In case of ~~an agency~~ a SUDF closure, the ~~provider~~ SUDF closing its treatment agency must arrange for continued management of all client records. ~~The closing provider must notify the department in writing of the mailing and street address where records will be stored and specify the person managing the records. The closing provider may:~~

~~(a) continue to manage records and give assurance they will respond to authorized requests for copies of client records within a reasonable period of time;~~

~~(b) transfer records of clients who have given written consent to another certified provider;~~

~~(c) enter into a service organization agreement with a state approved chemical dependency provider to store and manage records, when the outgoing provider will no longer be a business and provide a copy of the agreement to the department.~~

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-306, 76-2-411, MCA

37.106.1454 CLIENT RECORD CONTENT REQUIREMENTS (1) The ~~service provider~~ substance use disorder residential facility (SUDF) must develop and implement procedures to ensure each client record ~~content~~ is available on-site and includes:

(a) through (c) remain the same.

(d) signed documentation the client was informed of federal confidentiality requirements and received a copy of the client notice as required in [NEW RULE VI];

(e) ~~assurance all clients have an~~ signed documentation the client received orientation to the ~~program's~~ SUDF's treatment services, infectious disease information, and disaster plan described in ARM 37.106.322;

(f) a voluntary consent to treatment signed and dated by the client or legal guardian;

(g) individualized treatment plan and treatment plan reviews;

(h) progress notes;

(i) ~~discharge summary~~ clinical notes;

(j) continuing care plan;

(j) and (k) remain the same, but are renumbered (k) and (l).

~~(l)~~(m) ~~properly completed~~ authorizations for release of information, as needed;

(m) remains the same, but is renumbered (n).

~~(n)~~(o) documentation ~~showing client received a copy of client~~ pertaining to client receipt of grievance policies and procedures.

(p) documentation of any client-filed written grievances and resolution;

(q) documentation the client received a copy of the client rights policy and the client's signature indicating he/she received the policy; and

(s) documentation of school educational courses attended or provided.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

37.106.1460 QUALITY MANAGEMENT REQUIREMENTS (1) The ~~program~~ substance use disorder facility (SUDF) ~~shall~~ must have a quality management committee that is representative of the SUDF's administration and staff members.

(2) The quality management committee must meet on a quarterly basis and is responsible for:

(a) developing a written plan for a continuous quality improvement program that is applicable to the entire organization ~~wide~~;

(b) remains the same.

~~(c) meeting at least on a quarterly basis;~~

(d) and (e) remain the same, but are renumbered (c) and (d).

(3) The quality improvement program must include at a minimum ~~include but not be limited to~~:

(a) and (b) remain the same.

(c) clinical services; ~~and~~

(d) client outcomes.; and

(e) a process for reviewing serious incidents, grievances and complaints, and medication errors.

(4) The SUDF must prepare and maintain on file an annual report including improvements made as a result of the quality management plan.

AUTH: 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

37.106.1470 FACILITY REQUIREMENTS (1) ~~The administrator is responsible for the overall management of the program facility(s)~~ In addition to requirements found in ARM 37.106.320, substance use disorder facilities (SUDF) must comply with additional requirements in this rule.

~~(2) Building requirements include but are not limited to the following:~~

~~(a)~~(2) ~~facilities~~ Facilities must be accessible to a person with a physical disability. If a ~~facility~~ SUDF is unable to provide access to ~~an individual~~ a person with a physical disability, the program must make arrangements for a referral or other accommodations to assure the person receives appropriate services~~;~~.

~~(b)~~(3) ~~facilities~~ Facilities must meet all applicable building and fire codes and be approved by the authority having jurisdiction to determine if the appropriate building and fire codes are met~~;~~.

~~(c) a patient or resident may not be admitted, housed, treated, or cared for in an addition or altered area until the area is inspected and approved by the department or in new construction until licensed by the department;~~

~~(d) facilities must be constructed and maintained in a manner to prevent entrance and infestation by rats, mice, insects, flies, or other vermin; and~~

~~(e) providers must ensure each facility, exterior grounds, and component parts such as but not limited to fences, equipments, outbuildings, and landscape items are safe, free of hazards, clean, and maintained in good repair.~~

~~(3) Water supply, sewage, and waste disposal requirements include but are not limited to the following:~~

~~(a) facilities must meet water and sewer system requirements of the municipality or jurisdiction in which it is located;~~

~~(b) hot water temperatures supplied to hand washing and bathing facilities must not exceed 120ºF;~~

(4) An inpatient or residential SUDF must have an annual fire inspection conducted by the state fire marshal or by the authority having jurisdiction, and must maintain a record of the inspection for at least three years following the date of the inspection.

(5) Exit doors shall not include locks which prevent evacuation, except as approved by the fire marshal and building codes agency having jurisdiction.

(6) Stairways, halls doorways, passageways and exits from rooms and from the facility must be kept unobstructed at all times.

(7) All exterior pathways, entrances, and exit ways shall be of hard, smooth material, and be unobstructed and in good repair at all times.

(8) A 2A10BC portable fire extinguisher shall be available on each floor of the facility or as required by the fire authority having jurisdiction.

(9) Portable fire extinguishers must be inspected, recharged, and tagged at least once a year by a person certified by the state to perform these services.

(10) A smoke detector, approved by a recognized testing laboratory, which is properly maintained and regularly tested, must be located on each level and in all sleeping areas, bedroom hallways, and common living areas, with the exception of the kitchen and bathrooms of a SUDF or as required by the fire authority having jurisdiction.

(11) If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly;

(b) new operating batteries must be installed at least once each calendar year; and

(c) documentation demonstrating required maintenance must be kept on-site for a period of 24 months.

(12) Garbage and refuse must be:

~~(c)~~(a) ~~garbage and refuse must be~~ kept in durable, easily cleanable, insect and rodent proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers; and

(b) disposed of daily and removed from the property at least weekly to prevent the development of odor and attraction of insects and rodents.

~~(d)~~(13) ~~refuse~~ Refuse and recycling containers stored outside the ~~residence~~ facility, dumpsters, compactors, and compactor systems must be easily cleanable, must be provided with tight-fitting lids, doors, or covers, and ~~shall~~ must be kept covered when not in actual use~~;~~.

~~(e) containers designed with drains must have drain plugs in place at all times, except during cleaning; and~~

~~(f) garbage and refuse must be disposed of daily and removed from the property at least weekly to prevent the development of odor and attraction of insects and rodents.~~

~~(4) Physical environmental requirements include but are not limited to the following:~~

~~(a) deodorants may not be used for odor control in lieu of proper ventilation;~~

~~(b)~~(14) ~~all~~ All operable windows must have a screen in good repair~~;~~.

~~(c) a minimum of 10 foot candles of light must be available in all hallways and bathrooms;~~

~~(d)~~(15) ~~each~~ Each room or area occupied by children under age five or ~~residents~~ clients with unsafe behaviors must have tamper resistant electrical outlets and hardware.~~;~~

~~(e)~~(16) ~~facilities~~ Facilities must have adequate private space for personal consultation with a client, staff member charting, and therapeutic and social activities, as appropriate~~;~~.

~~(f) all electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition;~~

~~(g) each facility must have an annual inspection by the local fire authority;~~

~~(h) each facility must have floors covered with an easily cleanable surface;~~ ~~and~~

~~(i) all walls and ceilings, including doors, windows, skylights, and similar closures must be maintained in good repair.~~

~~(5) Laundry requirements include but are not limited to the following:~~

~~(a) the program must ensure that laundry facilities, equipment, and laundry handling and processes will ensure linen and laundered items provided to residents are clean, in good repair, and adequate to meet the needs of residents.~~

~~(6) Bedding and linen requirements include but are not limited to the following:~~

~~(a) the program must ensure bedding and linen provided to residents are clean, in good repair, and adequate to meet the needs of residents including but not limited to:~~

~~(i) assuring each resident has a bed, a moisture-proof mattress cover, and mattress pad in good condition; and~~

~~(ii) assuring the facility or resident keep a supply of:~~

~~(A) clean bed linen on hand sufficient to change beds often enough to keep them clean, dry, and free from odors;~~

~~(B) clean individual towels and washcloths; and~~

~~(C) adequate blankets for each resident to maintain warmth while sleeping~~

(17) Poison control and emergency contacts must be posted at each telephone.

(18) Facilities must have a first aid kit readily available on each floor.

(19) Measures must be in place to ensure containers of poisonous and toxic materials are stored safely and contain a legible manufacturer's label or material safety data (MSD) sheets.

(20) Maintenance and cleaning tools must be maintained and stored in a safe and orderly manner.

~~(7)~~(21) Bathroom requirements include ~~but are not limited to~~ the following:

~~(a) the provider must ensure private or common-use toilet rooms and bathrooms are available to residents including the provision for:~~

~~(i)~~(a) a minimum of one toilet and hand washing sink for every four ~~residents~~ clients~~, or fraction thereof~~;

~~(ii)~~(b) a sink ~~is~~ located in or immediately accessible to each toilet room;

~~(iii)~~(c) a minimum of one bathing fixture for every six ~~residents~~ clients;

~~(iv)~~(d) hand cleansing soap or detergent must be available ~~at each lavatory in the facility~~. The use of a communal bar soap is prohibited;

~~(v)~~(e) ~~provision for~~ individual towels must be available ~~at each lavatory~~; and

~~(vi)~~(f) a waste receptacle must be located ~~near each lavatory~~ in each bathroom.

~~(8)~~(22) Bedroom requirements include ~~but are not limited to~~ the following:

(a) ~~the program shall ensure residents have an accessible, clean, well-maintained room with sufficient space and light for sleeping and personal activities including but not limited to ensuring:~~ single occupancy rooms must be at least 100 square feet;

~~(i)~~(b) multiple person bedrooms ~~are at~~ must be at least 60 square feet per person ~~in a multiple person room except where construction or cost would be prohibitive~~ (includes children in parent and children recovery homes);

(c) accommodate no more than four clients;

~~(ii)~~(d) direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another ~~resident's~~ client's bedroom;

~~(iii)~~(e) each bedroom has one ~~operable~~ outside window with visual privacy; ~~and~~

~~(iv) each bedroom is equipped with:~~

~~(A)~~(f) a bed for each client;

~~(B)~~(g) one ~~or more~~ noncombustible waste containers~~;~~ and

(C) remains the same, but is renumbered (h).

~~(9) Disaster plan requirements include but are not limited to the following:~~

~~(a) each facility must have an evacuation and disaster plan;~~

~~(b) there must be a fire evacuation plan for use in the event of a fire, addressing:~~

~~(i) a procedure for accounting for all residents and staff during and after the emergency and the meeting location after evacuation; and~~

~~(ii) making provisions for emergency medications, food, water, clothing, shelter, heat, and power.~~

~~(c) the posting of evacuation routes on the premises where services are being provided in a place where they can be easily viewed by clients, participants, and staff; and~~

~~(d) the program must conduct and document a drill of the fire and evacuation plan at least once a year.~~

~~(10) Infectious disease prevention and control requirements include but are not limited to the following:~~

~~(a) a program shall develop and follow a written infection control plan for both staff and clients, including but not limited to:~~

~~(i) implementation of universal precautions for communicable diseases; and~~

~~(ii) provision for patient and staff education necessary to implement infection control policies and procedures.~~

~~(11) Emergency procedure requirements include but are not limited to the following:~~

~~(a) facilities must have written procedures to be followed in the event of a medical or other emergency;~~

~~(b) poison control and emergency contacts must be posted at the telephone; and~~

~~(c) facilities must have a first aid kit readily available.~~

~~(12) Facility maintenance requirements include but are not limited to the following:~~

~~(a) each facility shall have evidence of a maintenance program and procedures that are utilized to keep the building and equipment in good repair and free from hazards;~~

~~(b) facilities must assure adequate housekeeping services, procedures, and or supplies are available to assure a clean, safe, and sanitary environment in all areas of the facility;~~

~~(c) facilities must be kept clean and free of odors; and~~

~~(d) facilities must use a dishwasher or use hot soapy water for hand washed utensils, dishes, and equipment.~~

~~(13) Pest control requirements include but are not limited to the following:~~

~~(a) effective measures intended to minimize the presence of rodents, flies, cockroaches, and other vermin on the premises;~~

~~(b) measures to ensure containers of poisonous and toxic materials be stored safely and bear a legible manufactures label or Material Safety Data (MSD) sheets; and~~

~~(c) maintenance and cleaning tools must be maintained and stored in a safe and orderly manner.~~

~~(14) Food and nutrition requirements include but are not limited to the following:~~

~~(a) the program must ensure resident food preparation, handling, and storage is adequate to meet the needs of residents including but not limited to the following:~~

~~(i) food must be stored in a clean, dry location where it is not exposed to contamination;~~

~~(ii) conveniently located refrigeration facilities or effectively insulated facilities must be provided to assure maintenance of potentially hazardous food;~~

~~(iii) food that isn't stored in original containers must be dated, labeled, and covered;~~

~~(iv) food cannot be stored on the floor;~~

~~(v) refrigerated foods must be maintained at a temperature of 41 to 44ºF;~~

~~(vi) frozen foods must be kept frozen;~~

~~(vii) raw fruits and vegetables must be thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form;~~

~~(viii) all home canned products are prohibited;~~

~~(ix) sinks used for preparation of foods must be cleaned and sanitized;~~

~~(x) food preparers shall wash their hands before engaging in food preparation, and during preparation as often as necessary to remove soil and contamination, and to prevent cross-contamination when changing tasks; and~~

~~(xi) food preparers and other authorized persons shall maintain a high degree of personal cleanliness and shall conform to good hygiene practices during food preparation.~~

~~(15) Pet management requirements include but are not limited to the following:~~

~~(a) facilities are allowed to have pets in residence based upon facility policy and ensuring all animals are current on vaccinations.~~

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

37.106.1475 ~~INPATIENT SERVICE REQUIREMENTS~~ ASAM 3.7 MEDICALLY MONITORED INTENSIVE INPATIENT REQUIREMENTS (1) To be licensed to provide ~~freestanding adult and adolescent medically monitored intensive inpatient~~ ASAM 3.7 ~~Level III.7 substance related disorders treatment~~ services, as outlined in the ASAM criteria, a substance use disorder facility (SUDF)~~, a provider~~ must meet the following staffing requirements:

(a) ~~staffing requirements include but are not limited to the following:~~ a medical director that oversees the treatment process, medication management, and all medical services;

~~(i)~~(b) a physician, nurse practitioner, or physician assistant licensed under Title 37, chapters 3 or 20, MCA, ~~to conduct a physical examination and screening of a client within 24 hours of the person's admission to a service to identify health problems and screen for communicable diseases~~ available on-call 24 hours a day, seven days a week to provide medical consultation, evaluate clients, and prescribe medications;

~~(ii)~~(c) a registered nurse (RN) licensed under Title 37, MCA, on-site or on call 24 hours a day, seven days a week to supervise nursing services; ~~and~~

(d) a RN or licensed practical nurse (LPN) on-site 24 hours a day, seven days a week;

(e) additional RNs, LPNs or certified nurse aides (CNA) in sufficient numbers to assist in the administration of medical protocols and assure the client's safety. LPNs and CNAs must be under the supervision of the RN;

(f) licensed addiction counselors or mental health professionals in sufficient numbers to provide therapeutic services to clients with substance use and mental disorders, as described by this chapter and in accordance with the clients' individualized treatment plans;

(g) a licensed addiction counselor or mental health professional must be on-site or on-call 16 hours a day, seven days a week;

(h) care managers in sufficient numbers to provide adequate services to clients; and

(i) rehabilitation aides in sufficient number to provide on-site 24 hours a day, seven days a week staffing patterns to ensure the safety of clients and to provide direct care services and appropriate supervision of clients.

~~(iii) a physician licensed under Title 37, MCA, available to provide medical consultation either as an employee of the service or through written agreement.~~

~~(b)~~(2) Medical service must be ~~requirements include but are not limited to the following~~ provided, according to written physician approved protocols, 24 hours a day, seven days a week and must include:

(a) a physical examination and screening conducted by a physician, nurse practitioner, or a physician assistant of clients on-site within 24 hours of admission, to identify medical needs for health problems and screen for communicable diseases;

(b) a comprehensive nursing assessment that includes a mental health screening and evaluates the need for acute intoxication and withdrawal management services completed by a registered nurse at the time of admission; and

(c) medication management.

(3) Daily clinical and medical services must be provided on-site by an interdisciplinary team seven days a week.

(4) The SUDF must provide recreational activities seven days a week.

(5) All progress notes must be completed in a timely manner and before the next session of the same type or there must be documentation why this did not occur.

(6) The SUDF must ensure a coordinated transfer to an acute care hospital or other licensed health care facilities.

(7) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care must be available through direct affiliation or referral processes.

~~(i) family services are made available;~~

~~(ii) direct affiliation with an acute care hospital; and~~

~~(iii) daily scheduled professional services; such services must include and are not limited to medical services and medication management, individual, group, family, and educational services.~~

~~(c) if community-based day treatment services as defined in ASAM are provided, there must be access to services provided under ASAM Level III.7.~~

~~(2) To be licensed to provide community-based residential program for adults and adolescents with ASAM Level III.5 substance use disorders, a provider must meet the following:~~

~~(a) staffing requirements include but are not limited to the following:~~

~~(i) a licensed physician, physician assistant, nurse practitioner, or registered nurse as defined as a licensed health care professional in 50-5-101, MCA, to conduct an assessment and evaluation of a client within 72 hours of admission to service; and~~

~~(ii) a nurse licensed under Title 37, MCA, on-site, on-call, or access to medical services 24 hours a day, seven days a week.~~

~~(b) service requirements including the following program policies must address:~~

~~(i) how the programs treat persons with substance use disorders and related problems;~~

~~(ii) admission criteria to include service limitations; and~~

~~(iii) daily scheduled professional services, such services may include but not be limited to medical services, nursing services, individual and group counseling, psychotherapy, family therapy, educational groups, occupational and recreational therapies, art, music, or movement therapies, physical therapy, and vocational rehabilitation activities.~~

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

37.106.1480 ~~COMMUNITY-BASED SOCIAL DETOXIFICATION PROGRAM REQUIREMENTS~~ WITHDRAWAL MANAGEMENT PROGRAM REQUIREMENTS

~~(1) The most intensive level of care, outside of an acute care hospital, is defined as medically monitored care to clients whose withdrawal symptoms are sufficiently severe to require 24-hour inpatient care with observation, monitoring, and treatment available and delivered by a multidisciplinary team including 24-hour nursing care under the supervision of a Montana licensed physician.~~

~~(2) To be licensed to provide medically monitored detoxification (ASAM Level III.7), a provider must meet the following:~~

~~(a) facility requirements include but are not limited to the following:~~

~~(i) the facility shall be equipped for clients who are impaired due to substances and who require safety rails on beds, handrails on showers, and other related equipment to assure the safety of impaired clients; and~~

~~(ii) oxygen or other emergency equipment according to the physician-prescribed protocols for responding to client health emergencies.~~

~~(b) staffing requirements include but are not limited to the following:~~

~~(i) a physician licensed under Title 37, MCA, available on call 24 hours a day, 7 days a week to evaluate clients and prescribe medications;~~

~~(ii) staff available in sufficient numbers and trained to respond to substance-related and co-occurring disorders of admitted clients;~~

~~(iii) a registered nurse licensed under Title 37, MCA, who is responsible for the supervision of nursing staff and the administration of detox protocols; and~~

~~(iv) support staff such as licensed practical nurses, certified nurse assistants, rehabilitation aides etc. in sufficient numbers to assure the safety of clients.~~

~~(c) service requirements include but are not limited to the following:~~

~~(i) a written agreement with a state approved chemical dependency treatment facility to provide ongoing care following client discharge from the detoxification service;~~

~~(ii) there shall be a discharge note that addresses the referral and service needs of the client for follow-up treatment or care;~~

~~(iii) medication administration and on-going assessment of the client which are documented in the client record;~~

~~(iv) written medication orders specifying the name, dose, and route of administration signed by the prescribing physician;~~

~~(v) meals and snacks in sufficient quantities to assure the nutritional needs of the clients are met; and~~

~~(vi) written policies and procedures specifying how the facility will provide for the transfer of patients when indicated, to an acute care hospital.~~

~~(3)~~(1) To be licensed to provide ~~community-based social detoxification as~~ clinically managed residential withdrawal management defined as ASAM ~~Level III-D, III.2-D, and III.7-D for individuals with substance use disorders as defined by ASAM~~ 3.2-WM, a provider must ~~meet the following~~ be licensed as an inpatient or residential health care facility program pursuant to 50-5-101, MCA, and meet the following:

~~(a) facility requirements include but are not limited to the following:~~

~~(i)~~(a) ~~the~~ The facility ~~shall~~ must be equipped for clients who are impaired due to substances and ~~who~~ may require safety rails on beds pursuant to ARM Title 37, chapter 106, subchapter 29, handrails on showers, and other related equipment to assure the safety of impaired clients.

~~(b) staffing requirements include but are not limited to the following:~~

~~(i)~~(b) ~~physician~~ The SUDF must have physician approved protocols for the monitoring of clients in withdrawal including when and under what circumstances clients should be transferred to ~~a~~ another health care facility~~;~~.

~~(ii)~~(c) The SUDF must have a written agreement with the health care facility or physician providing for emergency services when needed~~;~~.

~~(iii)~~(d) The SUDF must have written procedures specifying how staff will respond to emergencies and for the transfer of medically unstable ~~patients;~~ clients.

~~(iv)~~(e) The SUDF must have sufficient staff on duty ~~trained in CPR and the detox protocols on each shift to be followed to assure clients safe withdrawal from substances; and~~ 24 hours a day, seven days a week to supervise, observe, and support clients who are intoxicated or experiencing withdrawals.

~~(v)~~(f) ~~if medications are provided, there is a current prescription in the client's name and staff are trained in medication administration procedures which are documented in policies and procedures~~ The SUDF must train staff in physician approved protocols for monitoring clients in withdrawal and in medication management if medication is administered.

(g) The SUDF must have licensed addiction counselors (LAC) or mental health professionals in sufficient numbers to provide counseling and therapy services as described in this chapter and in accordance with the client's individualized treatment plan.

(h) The initial biopsychosocial assessment indicating this level of care must be reviewed by a licensed physician, nurse practitioner, or physician assistant during the admission process.

(i) The SUDF must provide daily clinical services to address the needs of each client. Clinical services may include medical services, individual group therapy, and withdrawal support as required in the client's individualized treatment plan.

~~(c) service requirements include but are not limited to the following:~~

~~(i) an initial physical examination by a qualified professional that assures the client can be safely detoxified in a nonmedical setting and documented in the client record;~~

~~(ii)~~(j) The SUDF must ensure regular vital signs are taken and recorded by staff trained to recognize symptoms indicating the client is becoming physically unstable~~;~~.

~~(iii) meals and snacks in sufficient quantities to meet the nutritional needs of the client;~~

~~(iv) there shall be a written discharge plan that assures necessary referrals and continuing treatment services;~~

~~(v) all entries in the client record will be signed and dated by staff providing the service; and~~

~~(vi) a written agreement with an approved addiction treatment provider assuring acceptance of client for treatment upon discharge from the detoxification service.~~

(k) All progress notes must be completed in a timely manner and before the next session of the same type, or there must be documentation why this did not occur.

(l) Coordination of necessary services (medical, laboratory, toxicology, psychiatric, psychological, emergency) or other levels of care must be available through direct affiliation or referral processes.

(2) The facility providing clinically managed residential withdrawal management (ASAM 3.2) must not exceed the number of inpatient or residential beds licensed for pursuant to 50-5-101 MCA.

(3) To be licensed to provide medically managed inpatient withdrawal, as defined as ASAM Level 3.7-WM, a provider must be licensed as an inpatient

substance use disorder facility and meet the requirements under ARM 37.106.1475 and the following:

(a) a RN must be on-site 24 hours a day, seven days a week to monitor clients receiving acute intoxication or withdrawal management services and administer services according to physician approved protocols;

(b) the facility must be equipped for clients who are impaired due to substances and who require assistive safety devices, as written in the physician approved protocols;

(c) all bathtubs and showers must be equipped with a safety handrail; and

(d) emergency equipment to include:

(i) oxygen;

(ii) automatic external defibrillator (AED);

(iii) suction machine; and

(iv) other emergency equipment according to the physician approved protocols for responding to client health emergencies.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

37.106.1485 ~~HALFWAY HOUSE COMMUNITY-BASED PARENT AND CHILDREN RESIDENTIAL HOMES (ASAM LEVEL III.3 – MEDIUM INTENSITY)~~ SINGLE SEX PARENT AND CHILDREN REQUIREMENTS ~~(1) The community-based parent and children residential homes for individuals with substance use disorders serve parent(s) with dependent child(ren) who are in need of 24-hour supportive housing while undergoing on- or off-site treatment services for substance use disorder and life skills training for independent living. To be licensed to provide community-based parent and children residential homes for individuals with substance use disorders ASAM Level III.3 medium intensity treatment, a provider must meet the following:~~

~~(a) 24-hour staffing patterns or security patterns to afford sufficient security to assure the safety of residents, with the availability of 24-hour telephone consultation of a licensed clinician with competence in the treatment of substance dependence disorders. Staffing requirements may include but are not limited to:~~

~~(i) licensed addiction counselor (LAC);~~

~~(ii) individuals trained in managing co-occurring disorders;~~

~~(iii) case managers that have a minimum of two years of higher education or four or more years of related work experience and orientation to the facility's policies and procedures; and~~

~~(iv) rehabilitation aides that have a minimum of a high school diploma or GED and orientation to the facilities policies and procedures.~~

~~(b) service requirements including but not limited to the following program policies must address:~~

~~(i) the delivery of ASAM Level III.3 treatment services either on- or off-site;~~

~~(ii) admission criteria indicating individuals appropriate for these settings;~~

~~(iii) how the treatment needs of both the parent(s) and child(ren) are identified and addressed;~~

~~(iv) how life skills training is provided as part of the daily living regimen and includes a curriculum to address independent living skills, vocational skills, and parenting skills;~~

~~(v) how services are coordinated to meet special needs of this population such as childcare, legal services, medical care, and transportation;~~

~~(vi) how age appropriate services are made available for children as needed;~~

~~(vii) assurance of a single gender of parent will be living at the facility; and~~

~~(viii) assurance for safe visitation.~~

(1) In addition to the licensing requirements in [NEW RULE XVI], a SUDF operating as a single sex parent and children ASAM 3.1 facility, must meet the following requirements:

(a) care management services must address the needs of the client's children in care;

(b) parenting skills must be addressed with evidence-based models that focus on the demands of being a parent in recovery; and

(c) the SUDF must provide age-appropriate services to meet the children's needs. Services include childcare, medical appointments, legal services, transportation, educational services, and recreational services.

(2) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. The materials must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(3) No extension cords can be used as permanent wiring. All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent electrocution.

(4) Indoor and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.

(5) Any outdoor play area must be maintained free from hazards such as wells, machinery, and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four feet high without any holes or spaces greater than four inches in diameter or natural barriers to restrict children from these areas.

(6) Outdoor play areas must be designed to ensure all areas are always visible and easily supervised by staff members.

(7) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel, or woodchips with a depth of the ground cover being at least six inches.

(8) Trampolines are prohibited for use by children in care.

(9) Toys, play equipment, and any other equipment used by children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.

(10) Toys and objects with a diameter of less than one inch (2.5 centimeters), objects with removable parts with a diameter of less than one inch (2.5 centimeters),

plastic bags, Styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.

(11) The Emergency Montana Poison Control Center number, (800) 222-1222, must be posted at all telephone locations in the facility.

(12) Use of waterbeds, water mattresses, gel pads, or sheepskin covers for children's sleeping surfaces is prohibited.

(13) Each infant under 18 months of age must be provided with a crib for sleeping.

(14) Each child 18 months of age and older must be provided with a bed for sleeping.

(15) Cribs must be made of durable, cleanable, nontoxic material, and have secured latching devices.

(16) Cribs must have no more than 2 and 3/8 inches of space between vertical slats.

(17) Cribs must meet requirements for full-size baby cribs and non-full-size baby cribs as specified by the Consumer Product Safety Commission at 16 CFR Part 1219 and 16 CFR Part 1220 (2011), incorporated by these references. Copies of the requirements for full-size baby cribs and non-full-size baby cribs are available at https://www.cpsc.gov/SafeSleep.

(18) Crib mattresses must fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses must be waterproof and easily sanitized.

(19) Cribs, cots, or mats must be thoroughly cleansed before assignment to another infant or toddler.

(20) Age-appropriate feeding equipment must be provided for every four infants or toddlers. This includes safe high-chairs, baby feeding tables, booster seats, and child-size tables and chairs. This equipment must be used in accordance with the manufacturer's instructions and must be appropriate for the age of the child using the equipment. Portable high-chairs that hook onto tables are prohibited.

(21) If the SUDF chooses to lock the facility door to prevent unauthorized access to the facility or to prevent a child from escaping, the facility must have no lock or fastening device which prevents free escape from the interior. Requirements include:

(a) locking devices must not require a key, a tool, or special knowledge or effort to open the door from the inside; and

(b) locked doors must be easily opened with one motion from the inside of the facility.

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

5. The department proposes to repeal the following rules:

37.27.108 ADMINISTRATIVE MANAGEMENT – GOVERNING BODY

AUTH: 53-24-209, MCA
IMP: 53-24-208, MCA

37.27.121 ALL PROGRAMS – PERSONNEL, STAFF DEVELOPMENT AND CERTIFICATION

AUTH: 53-24-204, 53-24-208, 53-24-215, MCA
IMP: 53-24-204, 53-24-208, MCA

37.27.136 OUTPATIENT COMPONENT REQUIREMENTS

AUTH: 53-24-204, 53-24-208, MCA
IMP: 53-24-208, MCA

37.27.137 DAY TREATMENT COMPONENT REQUIREMENTS

AUTH: 53-24-208, MCA
IMP: 53-24-208, MCA

37.27.138 INTENSIVE OUTPATIENT TREATMENT COMPONENT REQUIREMENT

AUTH: 53-24-208, MCA
IMP: 53-24-208, MCA

37.106.1401 MINIMUM STANDARDS FOR CHEMICAL DEPENDENCY FACILITIES

AUTH: 50-5-103, MCA
IMP: 50-5-201, 50-8-101, 50-8-102, 50-8-105, MCA

37.106.1462 REQUIRED OUTCOME MEASURES

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 76-2-411, MCA

37.106.1482 HALFWAY HOUSE COMMUNITY-BASED RESIDENTIAL PROGRAM REQUIREMENTS

AUTH: 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

37.106.1487 HALFWAY HOUSE SINGLE GENDER RESIDENTIAL HOMES (ASAM LEVEL III.5 – HIGH INTENSITY)

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

37.106.1491 HALFWAY HOUSE COMMUNITY-BASED SINGLE GENDER RESIDENTIAL HOMES (ASAM LEVEL III.1 – LOW INTENSITY)

AUTH: 50-5-103, 53-24-208, MCA
IMP: 50-5-101, 50-5-103, 53-24-208, 53-24-209, 76-2-411, MCA

6 STATEMENT OF REASONABLE NECESSITY

This rulemaking notice is part of the department's Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative. The HEART Initiative will establish a comprehensive continuum of care to address Montana's behavioral health needs, which include services for mental health and substance use disorder treatment. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans.

The department's Office of Inspector General (OIG) has worked in collaboration with the Behavioral Health and Developmental Disabilities Division (BHDD) to amend current licensure and state approval rules for substance use disorder facilities (SUDF).

Current substance use disorder (SUD) program facility licensing rules under the OIG are not aligned with the current American Society of Addiction Medicine (ASAM) Criteria. The ASAM Criteria is the most widely used and comprehensive set of guidelines for placement, continued stay, transfer, or discharge of individuals with addiction and co-occurring conditions. OIG and BHDD have worked together to implement the ASAM criteria to improve assessment and outcomes-driven treatment and recovery services for adults and adolescents. Current licensing rules do not include all ASAM levels of care and, in some instances, have language that conflicts with the current ASAM Criteria. State approval rules under the BHDD Division for SUD programs currently include requirements that generally fall under licensing responsibility. With the proposed amended rules, the department attempts to implement licensure standards for all levels of care and reduce or eliminate any duplication and conflict between state licensure and approval rules.

Additional changes include updating outdated terminology, repealing unnecessary or redundant rules, amending rules for accuracy and consistency, and providing better organization for ease of use by the regulated community. The proposed rulemaking transfers oversight of outpatient SUDFs to OIG, while maintaining quality of care reviews with BHDD. The proposed rules also allow BHDD to streamline the approval process and to delineate between prevention providers, individual licensed addiction counselors, and facilities licensed by OIG.

Additionally, BHDD is proposing changes to the AMDD Medicaid Services Provider Manual for SUD and Adult Mental Health and the AMDD Non-Medicaid Services Provider Manual for SUD and Adult Mental Health. The AMDD Medicaid and Non-Medicaid Manuals need to be updated to reflect ASAM requirements for

reimbursement and correct other inconsistencies that have been identified through provider engagement. These changes will allow BHDD to expand the behavioral health continuum of care and ensure consistency in the delivery of those services. BHDD would amend policies in the manuals that include the following changes:

- Update Program of Assertive Community Treatment (PACT) and Montana Assertive Community Treatment (MACT) Medicaid manual policies to ensure services are implemented as intended by national standards;
- Add a separate policy for Crisis Receiving Program to better align with the Crisis Now model;
- Add SUD to the medical necessity criteria for Community Based Psychiatric Rehabilitation Support Services;
- Add policies for ASAM 3.2-WM and ASAM 3.3;
- Add a concurrent services table to clarify which services cannot be billed at the same time;
- Clean up language in several policies to provide better clarification of service delivery;
- Revise ASAM 2.1, 2.5, 3.1, 3.5, and 3.7;
- Add staffing requirements described in the ASAM Criteria and OIG rules; and
- Remove tiered SUD Intensive Outpatient (IOP) (ASAM 2.1) bundles to ensure provision of services align with the ASAM Criteria

NEW RULE I

The department proposes to adopt NEW RULE I to enable it to implement sanctions for all noncompliant programs. This is necessary to ensure the safety of all individuals receiving services and provide for appropriate oversight of programs. The rule describes sanctions that result from violation of state or federal regulations.

NEW RULE II

The department proposes to adopt NEW RULE II to ensure compliance with 42 CFR, Part 2, for confidentiality of client information. The department proposes NEW RULE II to replace part of ARM 37.27.116 and consolidate confidentiality requirements into one rule. It is also necessary to ensure all information provided to these providers remain confidential and is only released to individuals or entities as required or permitted by state and federal law.

NEW RULE III

The department proposes to adopt NEW RULE III to implement requirements for communicable disease control for individual and prevention providers. This mirrors the proposed requirement for facilities under OIG rules.

NEW RULE IV

The department proposes to adopt NEW RULE IV to implement requirements on abuse, neglect, and exploitation with respect to individual and prevention providers. This mirrors the proposed requirement for facilities under OIG rules. This is necessary to ensure the safety of all individuals receiving services and to protect

such individuals from abuse, neglect, and exploitation. The rule gives clear guidance and describes what is required for staff training and procedures to follow when incidents of suspected abuse, neglect, and exploitation occur.

NEW RULE V

The department proposes to adopt NEW RULE V and incorporate the BHDD Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health due to the addition of Non-Medicaid mental health services to this manual.

The substantive changes to non-Medicaid mental health services are explained elsewhere in this statement of reasonable necessity and represent alignment with the mental health services provided to Medicaid members. Aligning Medicaid and non-Medicaid mental health services among recipients allows the state to establish a comprehensive continuum of care to address Montana's behavioral health needs.

NEW RULE VI

The department proposes to adopt NEW RULE VI to ensure compliance with 42 CFR, Part 2, for confidentiality of client information, to replace part of ARM 37.106.1420, and to consolidate confidentiality requirements into one rule. It is also necessary to ensure all information provided to the SUDF remains confidential and is only released to individuals or entities as required or permitted by state and federal law.

NEW RULE VII

The department proposes to adopt NEW RULE VII to separate reporting requirements currently outlined in ARM 37.106.1420 for better organization and ease of use by the regulated community. It is necessary to include reporting requirements for serious incidents to determine if an investigation is required to verify whether licensing violations have occurred or if a situation exists that has the potential to cause harm.

NEW RULE VIII

The department proposes to adopt NEW RULE VIII to separate reporting requirements currently outlined in ARM 37.106.1420 for better organization and ease of use by the regulated community. The proposed new rule combines reporting requirements for abuse, neglect, and exploitation with the facility's policies and procedures for handling suspected abuse, neglect, and exploitation within the facility. The proposed new rule is necessary to ensure the safety of all individuals receiving services within the SUDF from abuse and neglect. The rule gives clear guidance and describes what is required for staff training and procedures to follow when incidents of suspected abuse, neglect, and exploitation occur.

NEW RULE IX

The department proposes to adopt NEW RULE IX to consolidate current and new training requirements under one rule. It is necessary for SUDFs to provide adequate training to staff to ensure patient safety and best practices are utilized so that staff are prepared to address the ever-changing needs of the SUDF and the individuals

being served by the facility. Staff must be prepared to deal with a wide variety of possible scenarios, such as how to deal with crisis and emergency situations. Due to the difficult nature of individuals being served, providers need to implement effective de-escalation methods and assure staff competency in these procedures. The proposed new rule provides training, timelines, and expectations. When staff are not adequately trained to provide appropriate care, the quality of care is compromised, and staff and individuals in care are at risk. Requirements for ongoing training give staff the opportunity to remain current with industry treatment standards and improve their knowledge and skills to deal with difficult individuals with substance use disorder issues.

NEW RULE X

The department proposes to adopt NEW RULE X to provide the necessary regulations specific to SUDFs serving adolescents. Programs serving adolescents must differ from treatment of adults and should be designed to meet adolescents' different developmental needs as emotional, cognitive, physical, social, and moral development. Adaptation of adult treatment models is not clinically appropriate for adolescent treatment. The proposed new rule allows for the placement of adolescents up to the age of 21 in an adolescent-serving SUDF, if determined clinically appropriate. The new rule includes provisions for adolescent communication with guardians, supervision requirements specific to serving adolescents, requirements for educational activities, and guidelines for the residential arrangements of adolescents within the facility.

The rule provides clear guidelines in the application of crisis intervention and physical restraints. The rule incorporates federal guidelines pertaining to physical restraints, including when the use of physical restraints is acceptable and when it is prohibited. Since the use of physical restraint is a serious behavioral management technique and is to be used only in emergency situations, it is necessary to have strict guidelines to protect the adolescent, other adolescents placed in the SUDF, and the staff of a SUDF.

NEW RULE XI

The department proposes to adopt NEW RULE XI to clearly outline procedures for the safe administration, storage, and documentation of medication. The proposed new rule is necessary to provide for the safety of clients by ensuring that the client is given the proper medication, in the appropriate dosage, at the appropriate time. The proposed rule clarifies medication administration requirements for substance use disorder facilities that do not have nursing staff on site 24 hours a day, seven days a week. It further prohibits the use of medication as a means of discipline. It is necessary to include a rule prohibiting facilities from requiring clients to discontinue the use of prescribed medications to align with the Montana HEART requirements.

NEW RULE XII

The department proposes to adopt NEW RULE XII to provide the necessary policy and procedure requirements for pets, which does not include service animals. Animals, including pets, can be a source of illness for people. Hand washing and

appropriate pet care is the most important way to reduce the spread of infection. It is necessary to establish criteria to ensure that pets will be free and clear of health hazards and not present a danger to visitors, or to those who reside or work in the facility.

NEW RULE XIII

The department proposes to adopt NEW RULE XIII to separate food requirements under ARM 37.106.1470(14) and place all food service requirements under one rule. The proposed new rule is necessary to ensure programs meet the minimum requirements needed for safe food handling, preparation, and sanitation.

NEW RULE XIV

The department proposes to adopt NEW RULE XIV to align this level of care with the ASAM 3.5 criteria. The current licensure rules allow ASAM 3.5 services to be provided under two separate licenses: (1) inpatient/residential facility licensed under ARM 37.106.1475; and (2) residential halfway house licensed under ARM 37.106.1487. The two sets of rules required different levels of staffing and clinical requirements, but are reimbursed at the same level. Neither rule is aligned with the current ASAM 3.5 Criteria. This level of care provides residential care to individuals who do not require 24 hour medical or nursing interventions, but do require a structured 24 hour supportive treatment environment to initiate or continue a recovery process. The client's multidimensional needs are of such severity that they cannot safely be treated in a less intensive setting. The rule replaces the current requirement for nursing staff availability 24 hours with the correct ASAM guideline requiring clinical staff availability 24 hours per day. The rule includes a specific treatment requirement to focus on the client's substance use and addictive disorders and significant social and psychological problems. It is necessary to require daily planned clinical program activities to stabilize and maintain stabilization of the client's addiction symptoms and help him or her develop recovery skills. It is necessary to include a daily requirement of a certain number of hours of clinical services and activities, to ensure clinical treatment is provided daily, including weekends, as this level of care is intended to be short term.

NEW RULE XV

The department proposes to adopt NEW RULE XV to replace ARM 37.106.1487 and align with current ASAM criteria for ASAM 3.3 Clinically Managed Population-Specific High Intensity Residential (adult only) substance use disorder facilities. The rule provides requirements for a structured 24 hour residential recovery environment in combination with high intensity clinical services provided in a manner to meet the functional limitations of clients and to support recovery from substance related disorders. It is necessary to require daily planned clinical program activities and services to stabilize and maintain stabilization of the client's addiction symptoms and help him or her develop and apply recovery skills.

NEW RULE XVI

The department proposes to adopt NEW RULE XVI to replace ARM 37.106.1491 and align with current ASAM criteria for ASAM 3.1 Clinically Managed Low Intensity

Residential (adult or adolescent) SUDF. The rule provides low intensity residential care to individuals who do not require 24 hour medical or nursing interventions, but do require a structured 24 hour supportive treatment environment to practice and integrate their recovery and coping skills. It is necessary to require weekly planned clinical services and activities in order to facilitate the application of recovery skills, relapse prevention, and emotional coping strategies.

NEW RULE XVII

The department proposes to adopt NEW RULE XVII to transfer oversight responsibility of facilities providing this level of care to OIG from BHDD. The rule outlines all requirements for a Partial Hospitalization SUDF (which is referred to as Day Treatment in ARM 37.27.137). The proposed new rule aligns with ASAM Criteria for ASAM 2.5 Partial Hospitalization. The proposed new rule outlines requirements for weekly scheduled skilled treatment services provided by an interdisciplinary team of appropriately licensed and trained staff on-site a minimum of 20 hours per week. The rule provides partial hospitalization care to individuals who do not require 24 hour intensive supervision, but do require a structured supportive treatment environment to initiate or continue a recovery process. Weekly planned clinical program activities are necessary to stabilize and maintain stabilization of the client's addiction symptoms and to help him or her develop recovery skills.

NEW RULE XVIII

The department proposes to adopt NEW RULE XVIII to transfer oversight responsibility of outpatient SUDFs to OIG from BHDD. The proposed new rule requires skilled treatment services be provided by an interdisciplinary team of appropriately licensed and trained staff.

NEW RULE XIX

The department proposes to adopt NEW RULE XIX to separate part of ARM 37.106.1432(1) and ARM 37.106.1470(10) and consolidate all requirements for communicable disease control into one rule.

NEW RULE XX

The department proposes to adopt NEW RULE XX to include care management requirements in all levels of care for SUDFs. Care management is necessary to enhance the scope of addiction treatment and the recovery continuum for clients with substance abuse disorders.

ARM 37.27.101

The department proposes to amend this rule to indicate that state approval is required for access to alcohol tax dollars under 53-24-108, MCA. It also lists each ASAM level of care and additional specialty services that a program can identify in their state approval application. This is needed as programs can be licensed for more than one level of care, and the department will need to verify that the provider is qualified to deliver the level(s) of care requested in their application.

ARM 37.27.102
The department proposes to amend this rule to remove antiquated and unnecessary language, update definitions, and include new definitions to incorporate information addressed in these rules. Updated and new definitions are necessary to ensure terminology used throughout the proposed rules allows all readers to have a common understanding of the word or subject.

ARM 37.27.105
The department proposes to amend this rule to read BHDD instead of AMDD. This is necessary to reflect the current division name.

ARM 37.27.106
The department proposes to amend this rule to clarify that this rule applies to facilities that are applying to become state approved. Prevention providers are approved under ARM 37.27.105 and individual licensed addiction counselors (LAC) will be approved under ARM 37.27.107. The department proposes to remove provisions in ARM 37.27.106(1) and place them in ARM 37.27.101. This is necessary to delineate between prevention providers, individual LACs, and facilities.

ARM 37.27.107
The department proposes to amend this rule to clarify that this rule applies to individual providers who are LACs. Prevention providers are approved under ARM 37.27.105, and facilities will be approved under ARM 37.27.106. This is necessary to delineate between prevention providers, individual LACs, and facilities.

ARM 37.27.115
The department proposes to amend this rule to clarify program requirements regarding an individualized treatment plan, referrals to appropriate services, and prohibition on any requirement to discontinue the use of medication as a condition of treatment. It is necessary to expand language regarding individualized treatment plan (ITP) and referrals to ensure programs are compliant with Medicaid requirements and both state and federal regulations. It is also necessary to include rules prohibiting programs from requiring clients to discontinue the use of prescribed medications to align with the Montana HEART Initiative requirements.

ARM 37.27.116
The department proposes to amend the rule by updating the information regarding client rights when receiving treatment from individual and prevention providers. The proposed amendments are necessary to ensure client rights and ensure clients are informed of their rights, treatment methods, and rules of the program. This mirrors the proposed requirement for facilities under OIG rules.

ARM 37.27.120
The department proposes to amend this rule to remove language that exists in other rules of this subchapter, to indicate that documentation will conform with requirements outlined in the BHDD Medicaid Manual, and to provide clarification of the required annual self-evaluation. This is necessary to address provider

comments regarding confusing and repetitive language. This is also necessary to ensure that providers are not being held to different documentation standards.

ARM 37.27.902
The department proposes to amend this rule to update the effective date of the BHDD Medicaid Manual and the BHDD Non Medicaid Manual to October 1, 2022. It is necessary to ensure that the manuals have SUD policies that reflect staffing requirements described in the ASAM Criteria and the OIG licensure rules, add a concurrent services table to clarify which services cannot be billed at the same time, and clean up language in several policies to provide better clarification of service delivery and address comments received through provider engagement.

ARM 37.88.101
The department proposes to amend this rule to update the effective date of the BHDD Medicaid Manual to October 1, 2022. It is necessary to ensure that the manuals have updated policies for Program of Assertive Community Treatment (PACT) and Montana Assertive Community Treatment (MACT) to ensure services are implemented as intended by national standards, a separate policy for Crisis Receiving Program to better align with the Crisis Now model, clean up language in several policies to provide better clarification of service delivery and address comments received through provider engagement, add a concurrent services table to clarify services that cannot be billed at the same time, and revise the SUD policies to add staffing requirements described in the ASAM Criteria and the OIG licensure rules.

ARM 37.106.1411
The department proposes to amend this rule to include a correct listing of SUDFs described in this rule.

ARM 37.106.1413
The department proposes to amend ARM 37.106.1413 by removing antiquated and unnecessary language, updating definitions, and including new definitions to incorporate information addressed in this rule. Updated and new definitions are necessary to ensure terminology used throughout the proposed rules allows all readers to have a common understanding of the word or subject.

ARM 37.106.1415
The department proposes to amend ARM 37.106.1415 to update terminology.

ARM 37.106.1420
The department proposes to amend this rule to consolidate all policy and procedure requirements, currently located in several rules, into one rule. An effective policy and procedure manual is essential for programs to maintain consistency in delivery of service. It is a tool to ensure new and existing employees understand the SUDF's expectations and requirements and to provide guidance to all staff in the SUDFs' specific methods and standards for how services are provided and work is performed.

It is necessary to add requirements to policy and procedure manuals to address the operation of the substance use facility required within this rule.

The department proposes to remove the provisions in ARM 37.97.1420(1)(j)(i) through (C) and place them in NEW RULE VI.

The department proposes to remove the provisions in ARM 37.97.1420(1)(l) through (n) and place them in NEW RULE VII.

The department proposes to remove the provisions in ARM 37.97.1420(1)(o) and (i) and place them in NEW RULE VIII.

The department proposes to remove (1)(f) through (vi) as the requirements are consolidated into the critical population definition and ARM 37.106.1420(1)(t).

ARM 37.106.1425

The department proposes to amend this rule to delineate the responsibilities of the governing body and administrator. The changes clarify the responsibilities of the administrator, and add the responsibilities of the governing body, which is necessary to provide organizations guidance and to ensure oversight of the SUDF. The proposed amendment outlines the role of the governing body to ensure the SUDF hires and maintains a qualified administrator.

ARM 37.106.1430

The department proposes to amend this rule to consolidate all requirements for personnel policies, currently in separate rules, into one rule. The proposed amendment provides facilities the ability to write their own policies and to outline what criminal history may disqualify applicants from working in the SUDF and to ensure the safety of clients.

The proposed amendment will remove unnecessary language, reorganize for ease of use by the regulated community, and remove requirements placed elsewhere in these rules.

ARM 37.106.1432

The department proposes to amend this rule to provide a location for documentation of personnel requirements throughout the rules and to correct wording and grammatical errors. The changes will require documentation showing compliance with the proposed rule requirements in personnel files.

ARM 37.106.1435

The department proposes to amend this rule to ensure that clients receive quality treatment and appropriate supervision from all individuals, volunteers, and interns.

ARM 37.106.1440

The department proposes to amend this rule to limit it to clarifying treatment plan requirements in all levels of care. Additional requirements for drug testing and critical populations have been moved to ARM 37.106.1420. (See the Statement of Reasonable Necessity for the amendments to ARM 37.106.1420.) The proposed rule focuses solely on treatment planning and increasing clarity and provides clear guidelines that align with industry standards and best practice. The proposed changes are necessary to incorporate requirements appropriate for all levels of care identified in the rule. The proposed changes are necessary to recognize the importance of developing a treatment plan implemented by an interdisciplinary team, while reviewing and updating the plan to ensure adequate treatment is being provided.

ARM 37.106.1450

The department proposes to amend the rule by updating the information regarding client rights when receiving treatment. The proposed amendments are necessary to ensure client rights and ensure clients are informed of their rights, treatment methods, and rules of the program. The department proposes to remove the provisions in ARM 37.106.1450(1)(i) through (ix) and place them in NEW RULE VI.

ARM 37.106.1452

The department proposes to amend this rule to provide minimum client record maintenance and system requirements that ensure confidentiality for client record systems are maintained as required by 42 CFR Part 2.

The department proposes to remove the current language in ARM 37.106(1)(c) and (d) and (2) as requirements regarding client record retention are located in ARM 37.106.314.

ARM 37.106.1454

The department proposes to amend this rule to specify information required in the client's case record to document services provided. Accurate records are essential for the continuity of care provided to clients. Adequate documentation allows all SUDF staff to be informed of essential information needed to provide quality services to clients.

ARM 37.106.1460

The department proposes to amend this rule to update and modify language and ensure the program's quality management process addresses all issues that would impact the quality of client care, and to require providers to develop a plan to improve organizational effectiveness.

ARM 37.106.1470

The department proposes to amend this rule to remove duplicative rules and update outdated and confusing language for ease of use by regulated community. The department proposes to remove current language under (2)(c), (3)(a), (b), (e), and (f) and (4)(a) through (f) as these requirements are located under Construction and Minimum Standards for All Health Care Facilities ARM 37.106.306, 37.106.320,

37.106.321, 37.106.322 and 37.106.331. Food and nutrition requirements under (14) have been moved to NEW RULE XIII. Pet requirements under (15) have been moved to NEW RULE XII.

The proposed changes are necessary to increase patient safety and include fire life safety standards as outlined in the International Building Code.

ARM 37.106.1475

The department proposes to amend this rule by removing licensure requirements for ASAM 3.5 level of care that have been proposed in NEW RULE XIV. The proposed amendments align requirements for inpatient SUDFs with ASAM Criteria for 3.7 level of care. The changes provide clarity on staffing and treatment requirements specifically for medically monitored inpatient facilities. Staffing requirements ensure the program is providing a planned, structured regimen of 24 hour professionally directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. Individuals admitted to this level of care may be experiencing physical and mental health problems and must have access to medical staff and clinical staff to address these needs.

Daily professional services are required to assess and address the client's individual needs, and clinical activities must be provided to stabilize the addictive and/or psychiatric symptoms. The provision of weekly professional services will enhance the client's understanding of his or her substance use and/or mental disorder.

ARM 37.106.1480

The department proposes to amend this rule to reorganize the structure of the rule, remove unnecessary language, update outdated language, provide clarification for SUDFs providing withdrawal management, and align licensure requirements to current ASAM Criteria.

The proposed amendment clarifies requirements for ASAM 3.2-WM that are confusing and conflict with inpatient 3.7-WM requirements. The proposed amendment implements staffing requirements for 3.2-WM programs to ensure adequate staffing is available to implement treatment requirements and follow physician approved protocols for monitoring clients that are intoxicated or experiencing withdrawal symptoms.

The department proposes to amend ARM 37.106.1480(2) as the majority of staffing requirements for 3.7WM level of care are under ARM 37.106.1475, ASAM 3.7 Medically Monitored Intensive Inpatient Requirements. Additional nursing and equipment requirements are proposed to monitor clients receiving acute intoxication or withdrawal management services.

The department proposes to remove current language under ARM 37.106.1480(1) as the information is located in the definition section of this rule.

The department proposes to remove current language under ARM 37.106.1480(3) as the rule incorrectly references ASAM Levels and contradicts requirements for medically monitored withdrawal management programs in amendments to ARM 37.106.1475(2).

ARM 37.106.1485

The department proposes to amend this rule to include licensing requirements specific to residential SUD facilities that serve single sex population of parents and their children. The proposed changes are necessary to help ensure the safety of the clients and their children and to provide the structure and support necessary to strengthen their recovery skills. The proposed amendment correctly aligns with ASAM Criteria for 3.1 level of care.

As the facilities admit clients with young children, it is necessary to include physical plant safety requirements to prevent harm to a child. Safety requirements address safe sleep, eating, and play, and poison control. Equipment is required to meet national safety standards.

ARM 37.27.108

The department proposes to repeal this rule because facilities that have an administrator and governing body will be licensed by OIG. This is also necessary because BHDD will approved individual LACs and prevention providers who would not have an administrator or governing body for purposes of treatment services.

ARM 37.27.121

The department proposes to repeal this rule because facilities with multiple personnel will be licensed by OIG. This is also necessary because BHDD lists the required license for individual providers under ARM 37.27.107.

ARM 37.27.136

The department proposes to repeal this rule because OIG will now be licensing outpatient facilities, and BHDD already approves individual LACs under ARM 37.27.107 for outpatient services that are within the scope of their individual licenses.

ARM 37.27.137

The department proposes to repeal this rule because OIG will now be licensing outpatient facilities, and BHDD will approve those licensed facilities for this level of care.

ARM 37.27.138

The department proposes to repeal this rule because OIG will now be licensing outpatient facilities, and BHDD will approve those licensed facilities for this level of care.

ARM 37.106.1401

The department proposes to repeal ARM 37.106.1401 because the types of SUDFs licensed by the department are now defined in ARM 37.106.1411 and 37.106.1413.

ARM 37.106.1462

The department proposes to repeal ARM 37.106.1462 as it no longer applies to SUDFs. The responsibility for collecting this data is not a licensure requirement. Outcome measures are included in ARM 37.106.1460.

ARM 37.106.1482

The department proposes to repeal ARM 37.106.1482 and 37.106.1489 because the types of SUDFs have been updated and defined in New Rules XIV, XV, and XVI.

ARM 37.106.1487

The department proposes to repeal ARM 37.106.1487 because the requirements will now be set forth in NEW RULE XIV. As stated above, NEW RULE XIV clarifies what services and treatment will be provided at the SUDF.

ARM 37.106.1489

The department proposes to repeal ARM 37.106.1482 and 37.106.1489 because the types of SUDFs have been updated and defined in NEW RULES XIV, XV, and XVI.

37.106.1491

The department proposes to repeal ARM 37.106.1491 because the requirements will now be set forth in NEW RULE XVI. As stated above, NEW RULE XVI clarifies what services and treatment will be provided at the SUDF.

Fiscal Impact

The department anticipates no fiscal impact regarding the proposed rulemaking.

7. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

8. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

9. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

10. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for

which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 8 above or may be made by completing a request form at any rules hearing held by the department.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ FLINT MURFITT
Flint Murfitt
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 37.85.104 and 37.85.105 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2022, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/84555355149?pwd=bGxQVTVoVWlpNmlRRDdSRCtvR3V6Zz09, Meeting ID: 845 5535 5149, and Password: 364347; or

(b) Dial by telephone +1 646 558 8656, Meeting ID: 845 5535 5149, and Password: 364347. Find your local number: https://mt-gov.zoom.us/u/kbBCRNKkuu.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 11, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the dates stated:

(a) ~~Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective July 1, 2022.~~ Mental health crisis services, as provided in ARM 37.88.101, is effective October 1, 2022.

(b) ~~72-hour presumptive eligibility for adult crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective July 1, 2022.~~ Goal 189, as provided in [NEW RULE V in MAR Notice No. 37-1010], is effective October 1, 2022.

(c) remains the same

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~July 1, 2022~~ October 1, 2022.

(2) remains the same.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) and (2) remain the same.

(3) The department adopts, and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals, as provided in ARM 37.86.2907, effective ~~October 1, 2021~~ October 1, 2022; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~38~~ 39.1, contained in the APR-DRG Table of Weights and Thresholds, effective ~~October 1, 2021~~ October 1, 2022. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~October 1, 2021~~ October 1, 2022.

(b) and (b)(i) remain the same.

(ii) the conversion factor for outpatient services on or after ~~October 1, 2021~~ October 1, 2022 is ~~$55.89~~ $56.14;

(iii) through (4) remain the same.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the date stated:

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~July 1, 2022~~ October 1, 2022.

(b) remains the same.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~July 1, 2022~~ October 1, 2022.

(6) remains the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.104 pertaining to updating non-Medicaid provider rates, fee schedules, and effective dates. The department is also proposing to amend ARM 37.85.105 pertaining to updating Medicaid provider rates, fee schedules, and effective dates.

The following explanation represents the reasonable necessity for the proposed amendments. The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The proposed amendments are explained below.

ARM 37.85.104(1)(a)(b) Mental Health Services Plan and 72-hour presumptive eligibility

As part of the department's Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative, the Behavioral Health and Developmental Disabilities Division (BHDD) proposes to remove references to the Mental Health Services Plan and the 72-Hour Presumptive Eligibility program, which has provided mental health services for individuals who do not qualify for Medicaid services but whose income qualifies them for non-Medicaid mental health services paid for with state funds. The department has proposed replacing those non-Medicaid mental health services with the same services provided to Medicaid members. The alignment of Medicaid and non-Medicaid mental health services will establish a comprehensive continuum of care to address Montana's behavioral health needs, which include services for mental health. By aligning the services, the state will have a unified and efficient system of mental health and crisis stabilization services for eligible Montanans. Additionally, BHDD proposes to add a fee schedule for the Goal 189 program, which pays for support items and services to assist individuals in avoiding admission to Montana State Hospital (MSH) or in successfully transitioning to a community setting upon discharge from MSH. By adding the fee schedule, Goal 189 services can be reimbursed through the same mechanism as other Medicaid and non-Medicaid services. This will increase efficiencies and reduce burden on providers. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans with mental health issues.

ARM 37.85.104(1)(d) Substance Use Disorder services

The department proposes to amend the rule to update the effective date of the fee schedule to October 1, 2022. The reasonable necessity for this change is to align non-Medicaid substance use disorder services with such Medicaid services. The updated fee schedule will reflect the removal of the psycho-social rehabilitation service and replacing it with community-based psychiatric rehabilitation and support service. Additionally, the intensive outpatient program is shifting from tiered reimbursement to a weekly bundled rate. And, the fee schedule will reflect the addition of two levels of care for clinically managed residential withdrawal management (ASAM 3.2-WM) and clinically managed population-specific high-intensity residential services (ASAM 3.3). It will also change room and board reimbursement for clinically managed low intensity residential (ASAM 3.1) to a bundled rate consistent with Medicaid reimbursement. All of these changes are

consistent with the American Society of Addiction Medicine (ASAM) guidelines and are necessary to align payment and billing procedures for non-Medicaid substance use disorder services with the Montana Medicaid fee schedule and billing procedures for such services.

ARM 37.85.105(3)(a) Inpatient Hospital Services Rates

The House Bill (HB) 2 Narrative for the 2023 biennium provides for a reduced appropriation from the 2021 biennium for Medicaid services provided by non-critical access hospitals in an amount equivalent to a 1.0 percent provider rate reduction. (https://leg.mt.gov/content/Publications/fiscal/Session-2021/HB-2-Narrative/B-Senate-Floor.pdf, page 2).

With a proposed effective date of October 1, 2022, the department targeted a 0.45 percent increase in inpatient non-critical access hospital reimbursement for the remaining nine months of SFY 2023. The combination of the SFY 2022 decrease (implemented through MAR Notice No. 37-957) and the proposed SFY 2023 increase will net to an overall targeted 2023 biennium decrease of 1.0 percent.

The department proposes to adopt Version 39.1 of the 3M APR-DRG grouper effective October 1, 2022. This grouper update includes changes to DRG relative weights, average length of stays, and adds and/or deletes some DRGs. The department proposes to increase the base rate for "General Hospitals" to $5,390 and the base rate for "Centers of Excellence" to $8,030.

ARM 37.85.105(3)(b) Outpatient Hospital Services Fee Schedules

The department proposes to increase the conversion factor utilized when pricing services under the Outpatient Prospective Payment System reimbursement methodology. The conversion factor is proposed to be $56.14.

With a proposed effective date of October 1, 2022, the department targeted a 0.45 percent increase in outpatient non-critical access hospital reimbursement for the remaining nine months of SFY 2023. The combination of the SFY 2022 decrease (implemented through MAR Notice No. 37-957) and the proposed SFY 2023 increase will net to an overall targeted 2023 biennium decrease of 1.0 percent. This is necessary to meet the intent of the legislature provided in the HB 2 Narrative document. The HB 2 Narrative document reduced the appropriation for Medicaid services provided by non-critical access hospitals in an amount equivalent to a 1.0 percent provider rate reduction over the 2023 biennium.

Free Standing Birthing Centers are reimbursed under the Outpatient Hospital Service reimbursement methodology pursuant to ARM 37.86.3005. While the HB 2 reduction did not specify Free Standing Birthing Centers, the reimbursement rates for this provider are impacted by changes to the conversion factor. Therefore, the combination of the SFY 2022 decrease (implemented through MAR Notice No.37-957) and the proposed SFY 2023 increase will result in overall 2023 biennium decrease of approximately 1.0 percent for Free Standing Birthing Center provider reimbursement.

ARM 37.85.105(5)(a)(c) Mental Health Center services and Substance Use Disorder services

As part of the department's HEART Initiative, the department proposes to amend the rule to update the effective date of both fee schedules to October 1, 2022. As indicated above, this is necessary to ensure that BHDD is allowed to expand the behavioral health continuum of care and ensure consistency in the delivery of those services.

The proposed October 1, 2022, fee schedules can be found at: https://medicaidprovider.mt.gov/proposedfs.

Fiscal Impact

The following table displays the anticipated financial impact during SFY 2023, and the number of providers affected by the proposed amendments.

Provider Type	SFY 2023 Budget Impact (Federal Funds)	SFY 2023 Budget Impact (State Funds)	SFY 2023 Budget Impact (Total Funds)	Active Provider Count
Free Standing Birthing Center	$67	$24	$91	2
Hospitals – Inpatient	$388,216	$123,496	$511,712	439
Hospitals – Outpatient	$358,331	$91,258	$449,589	439
Chemical Dependency Clinics	$660,188	$140,040	$800,227	47
Mental Health Centers	$68,558	$0	$68,558	1

5. The department intends these amendments to be effective October 1, 2022.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II and the amendment of ARM 38.5.1901, 38.5.1902, 38.5.1903, 38.5.1904, 38.5.1905, 38.5.1907, 38.5.1908, 38.5.1909, and 38.5.1910 pertaining to Public Utility Regulatory Policies Act (PURPA)	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 30, 2022, at 1:00 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on August 12, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I INCORPORATION OF FEDERAL RULES (1) The Commission adopts and incorporates by reference 18 CFR, Part 292, as effective August 5, 2022, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under section 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617. A copy of this incorporated material may be obtained from the Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, or online at https://www.ecfr.gov/current/title-18/chapter-I/subchapter-K/part-292?toc=1.

AUTH: 69-3-103, 69-3-604, MCA
IMP: 69-3-102, 69-3-603, 69-3-604, MCA

NEW RULE II VOLUNTARY MEDIATION (1) Before the filing of a petition, a utility and qualifying facility may mutually agree to request voluntary mediation through a Commission-appointed mediator. The utility and qualifying facility must equally share the cost of any contracted mediator. Requests for mediation must be signed by authorized representatives of the utility and qualifying facility and filed pursuant to ARM 38.2.1203.

(2) Upon receipt of a request for voluntary mediation, the Commission's presiding officer may appoint a mediator.

(3) Requests for mediation must be served on the Montana Consumer Counsel.

(4) Unless the parties and appointed mediator otherwise agree, the voluntary mediation will proceed as follows:

(a) Within seven days of the filing of a request for voluntary mediation, each party must submit to the mediator an opening mediation statement, including a complete copy of each party's proposed power purchase agreement and a list identifying each disputed contract term.

(b) Within seven days of the submission of an opening mediation statement, each party may submit to the mediator a response statement.

(c) The parties and mediator will use reasonable efforts to schedule mediation within 60 days from the date of the request for voluntary mediation.

(5) The filing of a request for voluntary mediation will not affect the formation of a legally enforceable obligation under ARM 38.5.1909.

AUTH: 69-3-103, 69-3-604, MCA
IMP: 69-3-102, 69-3-603, 69-3-604, MCA

REASON: The Commission has incorporated by reference federal rules regarding the Public Utility Regulatory Policies Act (PURPA) in two of its existing rules. To avoid inconsistencies and improve the organization of the Commission's PURPA rules, the Commission proposes to move the incorporation of federal rules into New Rule I.

New Rule II was originally proposed by representatives of the qualifying facility community as a potential tool to narrow the scope of contested issues presented in a petition to set terms and conditions under 69-3-604, MCA. In the Commission's experience, the range of contested issues in PURPA proceedings has expanded considerably over the years. The Commission therefore generally supports efforts to narrow the scope of issues in these cases. The voluntary mediation process in New Rule II could allow qualifying facilities and utilities to resolve disputes before petitioning the Commission to set disputed terms and conditions.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

38.5.1901 DEFINITIONS ~~(1) The commission hereby adopts and incorporates by reference 18 CFR, Part 292, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617. A copy of this incorporated material may be obtained from the Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.~~

~~(2)~~ (1) For purposes of these rules, the following definitions apply:

(a) "Avoided costs" is defined as provided in 18 CFR 292.101(b)(6) ~~means the incremental costs as determined by the commission to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source~~.

(b) "Cogeneration facility" is defined as provided in 18 CFR 292.202(c) ~~means equipment used to produce electric energy and forms of useful thermal energy such as heat or steam, used for industrial, commercial, heating or cooling purposes, through the sequential use of energy~~.

(c) "Commission" means the Montana Public Service Commission.

(d) "FERC" means the Federal Energy Regulatory Commission.

~~(d)~~ (e) "Interconnection costs" is defined as provided in 18 CFR 292.101(b)(7) ~~means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding interconnection costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs~~.

~~(e)~~ (f) "Production profile" means the expected hourly generation output of a qualifying facility for a full year based an engineering analysis of the qualifying facility's power production capabilities and fuel use or availability.

~~(f)~~ (g) "Purchase" is defined as provided in 18 CFR 292.101(b)(2) ~~means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility~~.

~~(g)~~ (h) "Qualifying facility" or "facility" means~~:~~

~~(i) A~~ a cogeneration facility or small power production facility that ~~which~~ meets the criteria ~~operating, efficiency, and ownership standards~~ established by FERC regulations~~,~~ in 18 CFR, Part 292, the requirements of 69-3-601, MCA, and has self-certified or been certified by FERC. ~~as incorporated in ARM 38.5.1901(1); or~~

~~(ii) A small power production facility which meets the production capacity, energy source, and ownership criteria established by FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1).~~

~~(h)~~ (i) "Rate" is defined as provided in 18 CFR 292.101(b)(5) ~~means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification and any contract pertaining to the sale or purchase of electric energy or capacity.~~

(j) "Resource plan" means the utility's integrated least cost resource plan, developed through the process described in Commission rules.

~~(i)~~ (k) "Sale" is defined as provided in 18 CFR 292.101(b)(3) ~~means the sale of electric energy or capacity or both by an electric utility to a qualifying facility~~.

~~(j)~~ (l) "Small power production facility" is defined as provided in 18 CFR 292.204 ~~means a facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 50 megawatts of electricity,~~

~~and which depends upon biomass, waste, or renewable resources for its primary source of energy. At least 50 percent of the equity interest in a small power production facility must be owned by a person not primarily engaged in the generation or sale of electric energy. The provisions of FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1), respecting site location and primary energy sources are incorporated by reference in this definition~~.

~~(k)~~ (m) "Standard rates" means those rates for qualifying facilities with a nameplate generating capacity of 3 megawatts or less established in a Commission-approved tariff that ~~calculated by a means approved by the commission which~~:

(i) in the case of purchases, are based on avoided costs to the utility, and are applicable to all contracts with qualifying facilities that do not choose to negotiate a different rate; ~~computed annually by the utility and made available to the public, are reviewed by the commission, and are applicable to all contracts with qualifying facilities which do not choose to negotiate a different rate;~~ or

(ii) in the case of sales by a utility to a qualifying facility, are the utility's tariff schedules in effect for members of the same class as the qualifying facility.

(l) (n) "System emergency" is defined as provided in 18 CFR 292.101(b)(4) ~~means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property~~.

~~(m)~~ (o) "Utility" means any public utility, as defined in 69-3-101, MCA, which provides electric service subject to the jurisdiction of the Montana Public Service Commission.

(2) The federal regulations referred to in this rule can be reviewed at the Commission's office or online at https://www.ecfr.gov/current/title-18/chapter-I/subchapter-K/part-292?toc=1.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

38.5.1902 GENERAL PROVISIONS ~~(1) The commission hereby adopts and incorporates by reference 18 CFR, Part 292, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617. A copy of this incorporated material may be obtained from the commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.~~

~~(2) Any cogeneration or small power production facility in Montana, which is a qualifying facility under the criteria for size, fuel-use, and ownership established by FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1), is a qualifying facility eligible to participate, under these rules, in arrangements for purchases and sales of electric power with electric utilities regulated by the commission.~~

(1) Any qualifying facility is eligible to participate, under these rules, in arrangements for purchases and sales of electric power with electric utilities regulated by the Commission.

~~(3)~~ (2) Any qualifying facility in Montana ~~which~~ that produces electric energy or capacity, or both, available for purchase by any public utility regulated by the

Commission, shall not be considered a public utility within the meaning of 69-3-101, MCA, and shall be exempt from regulation by the Commission as a public utility, except insofar as these rules or any other Commission order, tariff, requirement, or rule governing the activities of public utilities may affect the facility in its dealings with such regulated utilities. Nothing in these rules is to be construed to limit the full powers of regulation, supervision, and control of public utilities vested by law in the Commission.

~~(4)~~ (3) Nothing in these rules shall exempt any qualifying facility from the applicable licensing or permit requirements which may be imposed on facilities by Montana laws and regulations governing water use, land use, community development and planning, zoning, air quality, environmental protection, or any other existing pertinent law or regulation administered by state agencies other than the Commission.

~~(5)~~ (4) All purchases and sales of electric power between a utility and a qualifying facility that is not eligible for standard ~~offer~~ rates shall be accomplished according to the terms of a written contract negotiated between the parties and/or terms set by the Commission pursuant to a petition under 69-3-603, MCA. ~~The utility shall compute the avoided costs for a qualifying facility that is not eligible for standard offer rates at the time the qualifying facility requests a contract. Only qualifying facilities having a nameplate capacity not greater than 3 MW are eligible for standard offer rates. All purchases and sales of electric power between a utility and a qualifying facility that is eligible for standard offer rates shall be accomplished according to the terms of a written contract between the parties or in accordance with the applicable standard tariff provisions as approved by the commission. The utility shall recompute short-term and long-term avoided costs for standard offer rates following submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229.~~ The utility and the qualifying facility must attempt to negotiate an agreement, and if no agreement can be reached, either the utility or the qualifying facility may file a petition with the Commission pursuant to 69-3-603, MCA, to set the terms and conditions of the contract.

(5) All purchases and sales of electric power between a utility and a qualifying facility that is eligible for standard rates shall be accomplished according to the terms of a written contract between the parties or in accordance with the applicable standard rate tariff provisions and any applicable standard power purchase agreement approved by the Commission. The utility shall recompute avoided costs for standard rates following submission of its resource plan.

(6) ~~The~~ All contracts between utilities and qualifying facilities shall specify:

(a) the nature of the purchases and sales;

(b) the applicable rate schedule or negotiated rates for the purchases and sales or the Commission-determined rates pursuant to 69-3-603, MCA;

(c) the amount and manner of payment of interconnection costs;

(d) the means for measurement of the energy or capacity purchased or sold by the utility;

(e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;

(f) any installation and performance obligations ~~incentives to be provided by the utility to the qualifying facility~~;

(g) the services to be provided or discontinued by either party during system emergencies;

(h) the term of the contract;

(i) applicable operating safety and reliability standards with which the qualifying facility must comply; and

(j) appropriate insurance indemnity and liability provisions.

~~(6)~~(7) All purchases and sales of electric power between a utility and a qualifying facility shall be compatible with the goal of the Commission's integrated least-cost resource planning and acquisition act, 69-3-1201 through 69-3-1209, MCA. ~~guidelines, ARM 38.5.2001 through 38.5.2012, and the commission's procurement plan guidelines, ARM 38.5.8201 through 38.5.8229.~~

~~(7) An existing qualifying facility smaller than 10 MW whose contract with a utility expires prior to July 1, 2015 will not be subject to the 3 MW size limitation for the purpose of obtaining a new or extended contract under an existing standard rate option.~~

AUTH: 69-3-103, 69-3-604, MCA
IMP: 69-3-102, 69-3-602, 69-3-603, MCA

38.5.1903 OBLIGATIONS OF UTILITIES TO QUALIFYING FACILITIES

(1) Each utility shall purchase any energy and capacity made available by a qualifying facility, except that a utility is not obligated to make purchases from an interconnected qualifying facility:

~~(i)~~ (a) during system emergencies as allowed in 18 CFR 292.307 ~~if such purchase would contribute to the emergency~~;

~~(ii)~~ (b) as ~~stipulated~~ agreed upon in the contract between the utility and the qualifying facility; or

~~(iii)~~ (c) ~~if, due to operational circumstances, purchases from a qualifying facility will result in costs greater than those which the utility would incur if it did not make such purchases. This provision is only applicable in the case of light loading periods in which the utility must cut back base load generation in order to purchase the qualifying facility's production followed by an immediate need to utilize less efficient generating capacity to meet a sudden high peak. Any utility seeking to invoke this exception must notify each affected qualifying facility and the commission one month prior to the time it intends to invoke this provision. Failure to properly notify the qualifying facilities and the commission or incorrect identification of such a period will result in reimbursement to the qualifying facility by the utility in an amount equal to that amount due had the qualifying facility's production been purchased.~~ as allowed in 18 CFR 292.304(f), but only if the qualifying facility is selling its output on an as-available basis.

(2) Except as provided in ~~ARM 38.5.1903(1)~~ this rule, each utility shall purchase any energy and capacity made available by a qualifying facility at the rate established under ARM 38.5.1905~~:~~.

~~(a) At a standard rate for such purchases which is based on avoided costs to the utility as determined by the commission; or~~

~~(b) If the qualifying facility agrees, at a rate which is a negotiated term of the contract between the utility and the facility and not to exceed avoided cost to the utility. However, the utility shall offer long-term contracts with qualifying facilities which permit a rate higher than avoided costs in the early years of the contract and a lower rate in the latter years.~~

(3) Each utility shall sell to any qualifying facility all electricity requested by the facility.

(4) Each utility shall make such interconnections with a qualifying facility in accordance with the provisions of ARM 38.5.1904.

(5) Each electric utility shall offer to operate in parallel with a ~~each~~ qualifying facility provided that the qualifying facility complies with any applicable standards established by the Commission, as required by 18 CFR 292.303(e). ~~the option of:~~

~~(a) operating in parallel with the utility grid, with a single meter monitoring only the net amount of electricity purchased or sold, or~~

~~(b) operating in a simultaneous purchase and sale arrangement with separate meters whereby all power produced by the qualifying facility is sold to the utility at the standard or negotiated purchase rate and all power used by the facility is sold to the facility by the utility at the tariff rate; provided that the requirements of ARM 38.5.1907 are met by the qualifying facility.~~

(6) Consistent with 18 CFR 292.303(d), ~~A~~any utility which is otherwise obligated to purchase energy or capacity from a qualifying facility may, if the affected qualifying facility agrees, transmit energy or capacity purchased from the facility to any other electric utility. Any electric utility subject to the Commission's jurisdiction that receives this energy or capacity shall be subject to the pricing provisions contained in these rules. ~~The cost of transmission may be assigned to the qualifying facility.~~ The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses and shall not include any charges for transmission.

(7) Each utility shall, if required by the Commission, include installation and performance incentive provisions in any contract with a qualifying facility. Such provisions shall offer a maximum dollar amount per kw per month for any month in which the facility's energy output meets or exceeds specified levels of performance.

(8) Each utility shall, upon initial contact with a potential qualifying facility, provide the potential qualifying facility with one copy of:

(a) these rules~~.~~;

(b) ~~the commission's~~ if it appears the qualifying facility is eligible for the utility's Commission-approved standard ~~provisions~~ rate tariff, a copy of that tariff and any applicable Commission-approved power purchase agreement; ~~and~~

(c) if the utility's Commission-approved standard rate tariff is not provided under (8)(b): ~~the commission's standard complaint procedure.~~

(i) a list of all information required to provide an initial calculation of avoided costs pursuant to ARM 38.5.1910; and

(ii) upon the request of the qualifying facility and the receipt of all required information, an initial calculation of avoided costs pursuant to ARM 38.5.1910;

(d) the Commission's standard complaint procedure; and

(e) the utility's Commission-approved standard power purchase agreement, as applicable.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

38.5.1904 OBLIGATIONS OF QUALIFYING FACILITIES TO UTILITIES

(1) A qualifying facility shall specify in its contract with a utility the nature of the purchases undertaken in the contract, including:

(a) The technology used in the production of energy or capacity by the qualifying facility;

(b) The qualifying facility's best estimate of the facility's energy and/or capacity supply characteristics, including its dispatchability and availability during utility system daily and seasonal peak periods and during system emergencies.

(2) A qualifying facility that sells all of its generation to the interconnecting utility shall be fully responsible for interconnection costs and shall:

(a) Submit, for written approval prior to actual installation equipment specifications and detailed plans to the utility for the installation of its interconnection facilities, control and protective devices, and facilities to accommodate utility meter(s).

(b) Provide and install necessary meter socket and enclosure equipment at or near the point of interconnection, unless the utility has agreed to install the equipment and the facility has agreed to pay for this service; and

(c) Fund or ~~R~~reimburse the utility for ~~special or additional interconnection facilities, including control or protective devices, time of delivery metering, and reinforcement of the utility's system to receive or continue to receive the power delivered under the contract~~ interconnection costs, as defined in 18 CFR 292.101(b)(7). Such reimbursement may be accomplished by means of amortization over a reasonable period of time within the term of the contract and such costs must be reasonable according to industry standards.

(3) Interconnection costs undertaken by the utility shall be reimbursed by the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.

(4) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent specified in the contract between the facility and the utility, unless the qualifying facility is able to supply additional power and agrees to do so.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

38.5.1905 RATES FOR PURCHASES ~~(1) Each utility shall submit to the commission within 30 days of the filing of its integrated least cost resource plan, or an update to that plan, as required by ARM 38.5.2001 - 38.5.2012, the following cost data for use by the commission in determining avoided costs and standard rates therefrom.~~

~~(a) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of 10 megawatts and in~~

~~blocks of 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks of 10 megawatts and in blocks equivalent to 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next five years;~~

~~(b) The electric utility's integrated least cost resource plan, developed with reference to the commission's guidelines in ARM 38.5.2001 - 38.5.2012, for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten years; and~~

~~(c) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases and shall represent the avoidable resources in the utility's integrated least cost resource plan developed according to the commission's guidelines, ARM 38.5.2001 - 38.5.2012.~~

~~(2)~~ (1) Each utility shall purchase available power from any qualifying facility at: ~~either the standard rate determined by the commission to be appropriate for the utility, or at a rate which is a negotiated term of the contract between the utility and the qualifying facility.~~

(a) the standard rate determined by the Commission to be appropriate for the utility;

(b) the rate determined following a petition pursuant to 69-3-603, MCA; or

(c) at the rate which is a negotiated term of the contract between the utility and the qualifying facility.

~~(3)~~ (2) The rate paid by the utility for any purchase shall not exceed the utility's avoided costs. ~~to the utility, calculated:~~ Avoided costs will be calculated as provided in this rule, unless the utility and the qualifying facility agree upon a different rate.

~~(i) At the time of delivery of the facility's energy or capacity, for "as available" purchases; or~~

~~(ii) At either the time of delivery or the time the obligation is incurred, at the facility's option, for purchases of firm power over the term of the contract.~~

(a) For as-available purchases, the avoided cost of energy and capacity will be calculated at the time of delivery of the facility's energy or capacity.

(b) For purchases subject to an established legally enforceable obligation, the avoided cost of capacity will be calculated at the time the legally enforceable obligation was formed, and the avoided cost of energy will be calculated at the time of delivery of the facility's energy.

(3) When required by FERC regulation and to the extent practicable, the Commission's determination of avoided costs will take into account the factors described in 18 CFR 292.304(e).

~~(4) The standard rate for purchases from a qualifying facility shall be that rate calculated on the basis of avoided costs to the utility which is determined by the commission to be appropriate for the particular utility after consideration, to the~~

~~extent practicable, of the avoided cost data submitted to the commission by the utility and other interested persons.~~

~~(5) Assignment of a particular qualifying facility to the appropriate standard rate schedule for purchases by the utility should consider:~~

~~(a) The availability of capacity and energy from the qualifying facility during system daily and seasonal peak periods;~~

~~(b) The expected or demonstrated reliability of the qualifying facility;~~

~~(c) The relationship of the availability of energy or capacity from the qualifying facility to the ability of the utility to avoid cost;~~

~~(d) The contractual obligations the owner or operator of the qualifying facility is willing to undertake.~~

~~(e) The full range of resource attributes listed in the commission's integrated least cost resource planning and acquisition guidelines, ARM 38.5.2001 - 38.5.2012.~~

~~(6)~~ (4) If a qualifying facility has provided in its contract with a utility that measurement of facility energy input to the utility system and measurement of facility load will be accomplished with one meter, the utility shall pay the purchase rate only for the ~~qualifying facility shall be subject to a net billing system, whereby the utility shall pay the standard rate or the negotiated rate for purchases only for the~~ facility's input to the system which is in excess of the facility's load.

~~(7)~~ (5) If the qualifying facility has agreed in its contract with a utility that measurement of facility input to the utility system shall be accomplished by metering separate from that measuring the facility load, the qualifying facility may receive payment for all of the energy it supplies to the utility according to the applicable schedule of standard rates for purchases. Unless the qualifying facility has contracted for a different rate, the standard rate is applicable regardless of whether the qualifying facility is simultaneously served by the utility for the facility's load, and regardless of the rate charged by the utility for such simultaneous sales.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

38.5.1907 OPERATING SAFETY PROVISIONS ~~(1) The commission hereby adopts and incorporates by reference commission rule ARM 38.5.1010, which adopts the National Electrical Safety Code as the construction standard for utility lines and facilities.~~

~~(2)~~ (1) Each qualifying facility shall, in the design, installation, interconnection, maintenance, and operation of the facility, comply with the requirements of the National Electrical Safety Code, as incorporated by reference in ARM 38.5.1010.

~~(3)~~ (2) Each qualifying facility seeking parallel operation with any utility shall provide such control and protective devices as required by the utility for such operation.

~~(4)~~ (3) Each utility shall have the right:

(a) To enter the premises of the qualifying facility at reasonable times and with reasonable notice for inspection of the facility's protective devices~~,~~; and

(b) To disconnect without notice if a hazardous condition exists in the generation or other equipment of the qualifying facility, and such immediate action is

necessary to protect persons, utility facilities or other customers' facilities from damage or interference imminently likely to result from the hazardous condition.

~~(5)~~ (4) The Commission shall have the same power to investigate accidents occurring in the operation of any qualifying facility which result in death or serious injury to any person as it has under ~~section~~ 69-3-107, MCA, with respect to public utilities.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

38.5.1908 INFORMATION TO BE PROVIDED TO THE COMMISSION

(1) Pursuant to initial contact with a potential qualifying facility, each utility shall provide the Commission with one ~~(1)~~ electronic copy of the utility's initial written response.

(2) No later than July 1 of each even-numbered year, each utility shall file with the Commission the following cost data:

(a) the estimated avoided cost of energy as required by 18 CFR 292.302(b)(1);

(b) the electric utility's latest resource plan, including any supplements, as required by 18 CFR 292.302(b)(2); and

(c) the estimated capacity costs as required by 18 CFR 292.302(b)(3). These costs shall represent the avoidable resources in the utility's resource plan.

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

38.5.1909 CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

(1) A legally enforceable obligation is created when~~:~~ a qualifying facility has demonstrated, based on objective and reasonable criteria, commercial viability and a financial commitment to construct its facility. A qualifying facility has demonstrated commercial viability and a financial commitment when:

~~(a) a qualifying facility has unilaterally signed and tendered a power purchase agreement to the purchasing utility with a price term equal to either:~~

~~(i) the existing standard offer rate in accordance with the applicable standard tariff provisions as approved by the commission for qualifying facilities eligible for standard offer rates; or~~

~~(ii) a price term consistent with the purchasing utility's avoided costs, calculated within 14 days of the date the power purchase agreement is tendered, with specified beginning and ending dates for delivery of energy, capacity, or both to be purchased by the utility and provisions committing the qualifying facility to reimburse the purchasing utility for interconnection costs, pursuant to ARM 38.5.1901(2)(d) and 38.5.1904(2) and (3) for qualifying facilities not eligible for standard offer rates;~~

~~(b) a qualifying facility has obtained and provided to the purchasing utility written documents confirming control of the site for the length of the asserted legally enforceable obligation and permission to construct the qualifying facility that establish, at a minimum:~~

~~(i) proof of control of the site for the duration of the term of the power purchase agreement such as a lease or ownership interest in the real property;~~

~~(ii) proof of all required land use approvals and environmental permits necessary to construct and operate the facility; and~~

~~(iii) permission to construct the qualifying facility as defined in ARM 38.5.1901(2)(f);~~

~~(c) a qualifying facility has submitted a completed generator interconnection request that either requested study for network resource interconnection service (NRIS) for facilities larger than 20 megawatts or requested an optional study equivalent to NRIS for facilities 20 megawatts and smaller; and~~

~~(d) a qualifying facility has undertaken one of the following additional steps towards interconnection:~~

~~(i) the qualifying facility has executed and returned a signed System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study Agreement;~~

~~(ii) for qualifying facilities requesting to interconnect under the Small Generator Interconnection Procedures (SGIP), 53 days have elapsed since the qualifying facility submitted the interconnection request and all of the following conditions exist: the interconnecting utility did not provide the qualifying facility a System Impact Study Agreement within 38 days of the qualifying facility's interconnection request; the qualifying facility has not waived the tariffed SGIP timeline; and the qualifying facility has satisfied applicable interconnection customer deadlines in the tariffed SGIP;~~

~~(iii) for qualifying facilities requesting to interconnect under the Large Generator Interconnection Procedures (LGIP), 90 days have elapsed since the qualifying facility submitted a completed interconnection request with the interconnecting utility, and all of the following conditions exist: the qualifying facility has not been provided a System Impact Study Agreement within 60 days of the initial interconnection request; the qualifying facility has not waived the timeline associated with the work of the interconnecting utility associated with the LGIP process; and the qualifying facility has timely met its deadlines established in the LGIP; or~~

~~(iv) for qualifying facilities that have waived the deadlines pertaining to the work of the interconnecting utility associated either with the SGIP or LGIP process, the mutually agreed upon time period after which the qualifying facility was scheduled to execute and return a signed System Impact Study Agreement, with any required deposit, to the interconnecting utility and all technical data necessary to complete the System Impact Study, has elapsed.~~

(a) It has obtained qualifying facility status from FERC pursuant to the certification procedures in 18 CFR part 292;

(b) It has provided to the utility the following:

(i) a description of the location of the project;

(ii) an estimate of the energy production for the project, produced through industry-accepted engineering methods, that includes the kilowatt-hours or megawatt-hours to be produced by the qualifying facility for each month and year of the entire term of the qualifying facility's anticipated power purchase agreement;

(iii) an interconnection application, including any application fees;

(iv) a power purchase agreement executed by the qualifying facility; and

(v) a deposit, paid in full, to cover the estimated costs for a system impact or facilities study;

(c) It has taken meaningful steps to obtain site control adequate to commence construction of the project at the proposed location and operate the facility, throughout the term of the contract;

(d) It has submitted applications, including filing fees, to obtain all necessary permits, licenses, and approvals necessary to construct and operate the facility, and has provided copies of the same to the utility; and

(e) If the qualifying facility seeks payment for an avoided cost of capacity, it has requested to be studied for interconnection as a network resource.

AUTH: 69-3-103, 69-3-604~~(5)~~, MCA
IMP: 69-3-102, 69-3-604~~(5)~~, MCA

38.5.1910 ~~QUALIFYING FACILITY~~ ACCESS TO AVOIDED COST DATA AND MODELING ~~DATA~~ (1) Upon a request from a qualifying facility, a utility shall provide ~~reasonably transparent data concerning the utility's avoided cost.~~ the information required by ARM 38.5.1908(2).

(2) The utility must provide an initial avoided cost calculation within 21 days of receipt of a qualifying facility's resource information, including generating technology, size, location, and production profile, at no cost to the qualifying facility. ~~In providing an initial avoided cost calculation to the qualifying facility, the utility must use the methodologies most recently approved by the commission for that utility and must provide the qualifying facility with all assumptions and inputs used to make the avoided cost calculation.~~

~~(3) If a utility uses a proprietary modeling software to calculate its avoided cost, the utility must allow a qualifying facility, upon request, to conduct one avoided cost calculation using the utility modeling software with the qualifying facility's own assumptions and inputs at no cost to the qualifying facility. The utility must make dashboard access to its modeling software accessible to the qualifying facility within 21 days of the qualifying facility's request to conduct an alternative avoided cost calculation. The qualifying facility must have access to the modeling software for 21 days after the utility makes it available to the qualifying facility to conduct an alternative avoided cost calculation. A utility must accommodate reasonable requests by a qualifying facility to conduct additional avoided cost calculations using the utility's modeling software and may charge the qualifying facility a reasonable price for use of the modeling software beyond the single avoided cost calculation identified in this subsection.~~

~~(4) Pursuant to 69-3-206 and 69-3-209, MCA, a qualifying facility may petition the commission for fines against a utility for failure to adhere to this rule.~~

(3) Upon a request from a qualifying facility, the utility must provide all data, inputs, and assumptions it will use to calculate avoided costs. The utility must provide additional data and information that the qualifying facility may reasonably request to calculate avoided costs with the qualifying facility's preferred methodology.

(4) If any party uses a proprietary model to calculate avoided costs, the following rules apply:

(a) Each party may request one calculation using another party's model with customized inputs and assumptions, at no cost to the requesting party. The responding party must make the results accessible to the requesting party within 21 days of the request. The requesting party must have adequate access to the model to verify that the customized inputs and assumptions were used. Such access must be provided for at least 21 days.

(b) Each party must accommodate reasonable requests to conduct additional avoided cost calculations using the party's proprietary model and may charge the requesting party a reasonable price for the use of the model beyond the single avoided cost calculation identified in (4)(a).

(c) Nothing in this rule shall require a party that uses proprietary modeling software to provide copies of proprietary modeling software or source code to the requesting party.

(5) Any party may seek sanctions for failure to adhere to this rule, including fines pursuant to 69-3-206 and 69-3-209, MCA, as applicable.

AUTH: 69-3-103, 69-3-604~~(5)~~, MCA
IMP: 69-3-102, 69-3-604~~(5)~~, MCA

REASON: Consistent with its obligations under 2-4-314, MCA, the Commission has reviewed its existing rules implementing PURPA, determined that they are out of date in several ways, and proposes to update and modernize those rules with the revisions shown above. Further, the Commission has an obligation under PURPA to incorporate rules adopted by the Federal Energy Regulatory Commission (FERC), and several of the Commission's rules do not reflect current FERC rules.

The Commission proposes to update the definitions in ARM 38.5.1901 to reflect the current definitions provided in the PURPA rules adopted by the FERC. Several of the Commission's current definitions do not match FERC's definitions, and revisions are required to comply with PURPA. To simplify future revisions that may be required to match FERC's definitions, the Commission proposes to refer directly to the relevant FERC regulation, rather than repeating FERC's definition. The Commission proposes to add a definition of "resource plan" to clarify references to such plans in other PURPA rules. The Commission proposes to incorporate the 3-megawatt size limit for standard rates in the definition of standard rates, so the size limit does not need to be repeated when standard rates are discussed in other rules. The Commission further proposes to include a new (2) to refer readers to the cited federal regulations online.

The Commission proposes to amend ARM 38.5.1902 to move the incorporation of federal rules to its own rule, New Rule I, for clarity and ease of incorporating future amendments. Section (1) of the current rule is therefore redundant and is deleted. Section (2) of the current rule needlessly repeats the standards for certification of a qualifying facility, which are already established in federal regulations. The Commission proposes to simplify the language in (2) of the current rule with the new,

proposed (1). The renumbered (4) of the proposed rule is revised to specifically address standard rates for larger qualifying facilities that do not qualify for standard rates, as that term is defined in the proposed revisions to ARM 38.5.1901. The proposal requires qualifying facilities and utilities to attempt to negotiate an agreement before petitioning the Commission, which conforms with 69-3-603, MCA. This change is also responsive to requests from qualifying facilities for a clearer negotiation requirement in Commission rules. With the revisions that refocus (4) on larger qualifying facilities, the new (5) is necessary to provide guidance for small qualifying facilities, which are not permitted to petition the Commission for rates different from the Commission-approved standard rate under 69-3-603(3), MCA. New (5) of the proposed rule also incorporates a request from qualifying facilities for a Commission-approved standard form power purchase agreement as a means of limiting potential issues that may arise in negotiations between small qualifying facilities and utilities. The Commission anticipates that there may need to be multiple versions of any standard form agreement to accommodate differences in technology. The renumbered (6) of the proposed rule has been updated for clarity. The renumbered (7) is updated to refer to the currently effective resource planning statutes, which the Legislature adopted in 2019. Based on informal discussions with stakeholders, the Commission understands that the grandfather clause for existing qualifying facilities whose contracts expired prior to July 1, 2015, is no longer necessary, and is therefore deleted.

The Commission proposes to amend several sections of ARM 38.5.1903 to refer directly to federal regulations, as opposed to repeating the substance of those regulations in Commission rules. The deletion in the renumbered (1)(c) repeats language from a federal regulation, and is replaced by a reference to that regulation. The additional language "but only if the qualifying facility is selling its output on an as-available basis" mirrors FERC's interpretation of the federal regulation, as explained in *Pioneer Wind I, LLC*, 145 FERC ¶ 61,215 (Dec. 15, 2013). The Commission interprets this rule and the *Pioneer Wind I, LLC* decision to apply to situations when a utility may curtail a qualifying facility without compensation, and not to situations of compensated curtailment. Revisions to (2) are proposed to move all requirements relating to the rate for purchases to a standalone rule, ARM 38.5.1905. This revision improves organization and clarity, and will simplify any future changes to the standards for purchase rates. Section (5) is revised to refer to the relevant federal regulation, rather than repeating its terms. Section (6) is revised to reflect current federal regulation. Qualifying facilities have requested that this standard remain in the Commission's rules, even though it also exists in the cited federal rule. Recognizing that the information needs of a qualifying facility may vary depending on its size and technical configuration, the Commission proposes to revise (8) to provide greater clarity about the information that must be shared between the utility and the qualifying facility upon initial contact. The new requirements are tailored first to the size of the qualifying facility, and then to the qualifying facilities' generation characteristics. The Commission intends for this rule to avoid early conflicts regarding information disclosure.

The Commission proposes to amend ARM 38.5.1904 for clarity and to incorporate. Revisions to (1)(b) are necessary to reflect developments in storage technology that make dispatchability of a qualifying facility an important consideration in calculating avoided costs. Revisions to (2) are necessary to limit the scope of the part to only those qualifying facilities that sell all of their generation to the interconnecting utility, and therefore fall within the Commission's jurisdiction. Subsection (2)(c) is revised to refer directly to FERC's definition of interconnection costs that can be allocated to qualifying facilities pursuant to 18 CFR 292.306. This change recognizes the recent Montana Supreme Court opinion in *CED Wheatland Wind, LLC v. Mont. Dep't of Pub. Serv. Regul.*, 2022 MT 87, 408 Mont. 268, 509 P.3d 19, which interpreted the definition of interconnection costs. To the extent the current language of (2)(c) could be read to conflict with *CED Wheatland Wind*, it is necessary to revise the rule. The Commission proposes to avoid conflict with FERC's definition of interconnection costs by referring to it directly.

The Commission proposes to amend ARM 38.5.1905 to move each utility's obligation to provide avoided cost estimates to ARM 38.5.1908, which discusses information that must be provided to the Commission. This revision improves organization and provides greater clarity regarding reporting requirements. With the Commission's proposed revisions to ARM 38.5.1905, (1) of the current rule is redundant and can be deleted. The remainder of ARM 38.5.1905 focuses on the purchase rate for qualifying facilities' power. The proposed new (1) outlines the three ways in which the purchase rate may be set. Section (2) of the proposed rule is divided into two subsections, the first of which addresses circumstances in which the qualifying facility agrees to provide energy and capacity on an "as available" basis. Subsection (2)(b) of the proposed rule implements recent revisions to 18 CFR 292.304, which allows rates to be based on either the avoided costs calculated at the time of delivery or the time the obligation is incurred. FERC has given states the flexibility to require variable energy rates in long-term contracts or other legally enforceable obligations. As FERC explained in its order allowing variable energy rates, the practice of forecasting prices has produced prices that are inaccurate. In some cases, forecasting error led to overpayments from utility customers to qualifying facilities. Additionally, FERC found that independent power development no longer relies on a fixed energy price to obtain financial backing from investors and lenders. Because forecasting error in either direction creates rates that fail to reflect the utility's avoided costs, and because variable energy prices are becoming increasingly common in the energy industry, the Commission proposes to eliminate forecasting from the calculation of avoided energy costs. Instead, avoided energy costs would be calculated at the time a qualifying facility's energy is delivered. This proposal has the added benefit of eliminating a significant number of contested issues associated with avoided energy forecasts, which should encourage development by substantially simplifying contested case proceedings. Section (3) of the proposed rule implements FERC's revisions to the factors states must consider when setting rates, which are outlined in 18 CFR 292.304. Because the proposed rule refers directly to those factors in the federal regulation, they no longer need to be repeated in (4) and (5) of the current rule. The renumbered (4) of the proposed

rule is revised to simplify the concept billing based on a single meter that displays net input into the utility's system.

The Commission proposes to amend ARM 38.5.1907 to remove the current rule's incorporation of the National Electrical Safety Code by reference. The Commission has a separate rule that incorporates the National Electrical Safety Code. The Commission proposes to refer to that rule instead of incorporating the material in two places.

The Commission proposes to amend ARM 38.5.1908 to clarify that utilities may provide copies of their initial responses to qualifying facilities in an electronic format. This is consistent with other Commission rules that have moved to electronic filing. The Commission proposes to consolidate informational filing requirements that appeared in other rules under ARM 38.5.1908, as shown in the proposed new (2). Rather than repeating the filing requirements set in federal regulations, the Commission proposes to refer directly to the requirements as they appear in federal regulations. The second sentence in (2)(c) clarifies that the estimated capacity costs filed under the rule will be considered the avoidable resources in the utility's resource plan. The Commission intends for this clarification to reduce disputes over identifying the utility's avoided capacity resources.

The Commission proposes to amend ARM 38.5.1909 to reflect both recent Montana Supreme Court decisions concerning legally enforceable obligations (LEOs) under PURPA and revisions to FERC's rules. FERC has explained that LEO formation requires a qualifying facility to demonstrate commercial viability and a financial commitment. FERC has further explained that the factors for evaluating viability and commitment should be within the control of the qualifying facility and should not be dependent upon a third-party's actions. The Commission's proposed rule focuses on the qualifying facility's actions alone. The factors outlined in the Commission's proposed rule include several of FERC's examples of acceptable criteria for evaluating LEO formation. Other factors are based on the Commission's existing LEO factors, but have been redesigned to depend on the qualifying facility's actions alone. The new factor in (1)(e) recognizes that network resources have firm transmission rights, which allow the parties and the Commission to calculate an avoided cost of capacity. If, however, the qualifying facility chooses to forgo a capacity payment, it will not need to be designated as a network resource, and (1)(e) will not apply.

The Commission proposes to amend ARM 38.5.1910 to remove ambiguity about what constitutes "reasonably transparent data" concerning avoided cost calculations. The proposed revisions require utilities to provide qualifying facilities with all information the utility must to file with the Commission under ARM 38.5.1908. Under the proposed (3), utilities must also provide all data, inputs, and assumptions they will use in calculating avoided costs in responding to the qualifying facility. The Commission anticipates that these requirements will provide complete information to qualifying facilities; however, if a qualifying facility reasonably requires additional information to calculate avoided costs with a different method, (3) requires utilities to

make additional data and information available. The proposed (4) extends the existing rule regarding the use of proprietary models to apply to any party that proposes to use a proprietary model. As currently drafted, ARM 38.5.1910 only addresses a utility's use of proprietary modeling. The Commission anticipates that other parties may propose to use different proprietary models in the future. Finally, to address issues with trade secrets and confidentiality, the proposed rule expressly does not require the production of software or source code. Without this limitation, the Commission is concerned that the use of proprietary models would become too burdensome or impractical. The Commission notes, however, that its rule does not alter parties' rights and responsibilities under the Montana Rules of Evidence. The Commission may order a party to disclose or produce information beyond what is required by this rule in response to an appropriate motion.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov. Comments must be received no later than 5:00 p.m., September 2, 2022.

6. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The Commission, a commissioner, or a duly appointed presiding officer will preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ LUCAS HAMILTON
Lucas Hamilton
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Montana Public Service Commission
Department of Public Service Regulation

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.5.2202 and 38.5.2302 pertaining to pipeline safety	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 23, 2022, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on September 5, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 30, 2021~~ August 5, 2022. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 30, 2021~~ August 5, 2022. A copy of the referenced CFRs is available from the United States Department of Transportation, Office of

Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 is necessary to allow the department to use the most recent version of federal rules applicable to Montana's pipeline safety programs. Regular amendment of these rules is also necessary to remain in compliance with federal funding requirements. The referenced regulations may be reviewed at the department's offices or online at https://www.phmsa.dot.gov/pipeline/annotated-regulations/49-cft-199.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov, and must be received no later than 5:00 p.m., September 7, 2022.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601 no later than 5:00 p.m., September 5, 2022.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 entities based on the 27 entitles affected.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier

pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, faxed to: (406) 444-7618, emailed to pschelp@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ LUCAS HAMILTON
Lucas Hamilton
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.118 pertaining to tribal government applications for temporary property tax exemptions	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 26, 2022, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5:00 p.m. on August 12, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.20.118 TRIBAL GOVERNMENT APPLICATION FOR A TEMPORARY PROPERTY TAX EXEMPTION (1) A federally recognized tribe in Montana is eligible for a temporary property tax exemption of tribal fee land as provided in 15-6-230, MCA. ~~on January 1, under the following conditions:~~

~~(a) the tribe submits to the department the following:~~

~~(i) a United States Department of Interior, Bureau of Indian Affairs letter dated prior to January 1 acknowledging receipt of the tribe's written request or application for the acquisition of trust title to the tribal fee land; a tribal certification regarding whether the tribe subsequently received notice from the United States Department of Interior, Bureau of Indian Affairs that the tribe's written request or application was incomplete; and a tribal certification regarding whether the tribe has satisfied the requirements regarding incompleteness that were set out in the United States Department of Interior, Bureau of Indian Affairs letter as of the date of the application to the department; or~~

~~(ii) a United States Department of Interior, Bureau of Indian Affairs written certification to the director of the department that the tribe's initial written request or application for the acquisition of trust title to the tribal fee land was submitted prior to January 1 and the initial written request or application was complete as of the dates of the exemption application to the department; and~~

~~(b) the tribe makes timely application to the local department office in the year in which the exemption is sought.~~

(2) ~~The~~ A federally recognized tribe in Montana must ~~file~~ apply for a temporary tribal property tax exemption on an application form available from the ~~local~~ department, ~~office in the county in which the tribal fee land is located~~ on or before March 1 of the year for which the exemption is sought. ~~A tribe with tribal fee lands located in more than one county must file an application for a property tax exemption in each county.~~ Applications postmarked after March 1 will be considered for the following tax year.

(3) The following documents must ~~accompany~~ be submitted with the tribe's application to the department:

(a) ~~a United States Department of the Interior, Bureau of Indian Affairs' letter acknowledging receipt of the tribe's initial written request or application for acquisition of trust title to the tribal fee land, or a United States Department of Interior, Bureau of Indian Affairs certification to the director of the department, that the tribe's written request or application for acquisition of trust title to the tribal fee land was complete as of a specific date; and~~ United States Department of Interior Bureau of Indian Affairs (BIA) documentation stating that the initial written request or trust application submitted by the tribe was complete prior to January 1 of the year for which the exemption is sought;

(b) a tribal resolution identifying the fee land, by legal description, for which the tribe has applied for federal trust title~~.~~; and

(c) a deed, contract for deed, or notice of purchaser's interest that verifies ownership.

~~(4) The tribe must also certify in the application to the department whether the United States Department of Interior, Bureau of Indian Affairs has notified the tribe that its written request or application for acquisition of trust title to the tribal fee land was incomplete, and whether the tribe has satisfied the requirements regarding incompleteness that were set out in the United States Department of Interior, Bureau of Indian Affairs letter, as of the date of the application to the department.~~

~~(5) The temporary exemption will:~~

~~(a) apply only during the timeframe in which the tribe's written request or application is pending with the United States Department of Interior, Bureau of Indian Affairs;~~

~~(b) not exceed five years; and~~

~~(c) be removed on December 31 of the year in which the United States Department of Interior, Bureau of Indian Affairs, denies the tribe's written request or application for the acquisition of trust title. The department will:~~

~~(i) assess taxes on January 1 of the year after the tribe's written request or application is denied; and~~

~~(ii) no longer make available all property associated with a denied written request or application.~~

(4) The department will provide written notification to the county treasurer when an application is received and will identify the subject property. The department will also provide the county treasurer with a copy of all approved applications for the county.

(5) If a tribe's written request or trust application is denied by the BIA or the five-year exemption period expires while a trust application remains pending before the BIA, the department will:

(a) return the property to the tax rolls and value the property as of January 1 of the year after the tribe's written request or trust application is denied or the five-year exemption period expires; and

(b) provide the county treasurer with the taxable values for each property and each year there was a temporary exemption approved for applications received on or after May 7, 2021.

(6) ~~The~~ A tribe shall annually certify to the ~~director of the~~ department, by March 1, that ~~their~~ its written request or trust application ~~for the acquisition of trust title~~ is still under consideration by the ~~United States Department of Interior, Bureau of Indian Affairs~~ BIA and has not been denied.

~~(7) The department will approve or deny the application based on whether the property qualified for the exemption as of January 1 of the year for which the exemption is sought. The department will notify the tribe, the local department office, and the county treasurer of its decision in writing.~~

~~(8) The department will remove trust property from the tax rolls, as required by federal law, when the director of the department receives notice that the property has been acquired by the federal government in trust status for a tribe. The department will remove the property from the tax rolls on the date that the deed approving trust status is filed in the county in which the property is located.~~

~~(9)~~ (7) ~~When a tribe has administrative or contractual responsibilities, related to their own federal trust request or application process, the Secretary of Interior, or the person delegated authority by the Secretary of Interior,~~ A tribe must certify to the ~~director of the~~ department ~~that the~~ when any property has been ~~properly accepted~~ taken into trust ~~by, and is now subject to,~~ and is under the management of the United States, and provide the specific date that each property was taken into trust. Upon receipt of the certification, the department will ~~direct the local office to~~ contact the county treasurer and remove the parcel(s) from the tax rolls.

AUTH: 15-1-201, 15-6-230, MCA
IMP: 15-6-230, 15-6-235, MCA

REASONABLE NECESSITY: The 67th Montana Legislature enacted Senate Bill 214 (SB 214) which revised the temporary tribal property tax exemption process for tribal property. Section 15-6-230, MCA, as amended by SB 214, now requires the department to notify a county treasurer when an exemption application is received and when the exemption is approved. In addition, a county treasurer may recapture property taxes if the fee-to-trust exemption application is denied by the Bureau of Indian Affairs or the property is not accepted into trust status within the statutory five-year temporary exemption period and the department will provide the taxable value of to a county treasurer for a collection of taxes subject to recapture.

The department proposes amendments to ARM 42.20.118 which are necessary to implement the SB 214-revised processes described above. The department also proposes amendments to the rule in connection with administrative rule review for the Governor's Red Tape Relief Initiative, with the goal of an

improved rule that presents an application process that is clearer and more concise.

Section (1) is proposed for amendment to eliminate internal redundancies within the rule and with what is provided in 15-6-230, MCA. Amendments to (2) clarify statutory requirements and the application submission process with the department. Section (3) is proposed for amendment for brevity of a tribe's initial written request or trust application, and to clarify other supporting documentation requirements for this exemption application type. Proposed (4) implements SB 214's procedural requirements for the department described above, and proposed (5) provides a necessary contingency in the event of an application denial. Section (6) is amended for brevity and clarity of an applicant tribe's annual certification requirement during the pendency of the temporary exemption period.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., September 6, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 214, Senator Hertz, was contacted by email on April 26, 2022 and July 19, 2022.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.39.310 pertaining to a waste management process revision	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 26, 2022, at 11:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 12, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.39.310 WASTE MANAGEMENT (1) through (9) remain the same.

(10) After the expiration of the 72-hour period in (9), a licensee may dispose of marijuana stalks and stems without rendering them unusable pursuant to (3) by releasing them to a third-party contractor to render them unusable. A licensee must provide the department with a copy of the waste removal agreement with the third-party contractor before commencing services and must maintain the contract in the binder of documents required by ARM 42.39.105(6). The third-party contractor may process marijuana stalks and stems into non-marijuana products or otherwise render the marijuana stalks and stems unusable.

AUTH: 16-12-112, MCA
IMP: 16-12-103, 16-12-105, 16-12-112, 16-12-203, 16-12-210, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.310 to add (10), which would allow a marijuana licensee to dispose of marijuana stalks and stems in a more sustainable manner. Section 16-12-102(41), MCA, defines "usable marijuana" to exclude "stalks." Stems are similarly low in THC but, like stalks, can be further refined into non-marijuana products such as fiber and terpenes or can be disposed of in other more sustainable ways such as composting. The department is aware of at least one commercial hemp processor that has the ability to take marijuana stalks and stems, which would otherwise be disposed of as

waste, and create additional commodities with Montana employees to reduce the industry's contribution to landfills. The department proposes to review these service contracts for compliance that a contractor collects only marijuana stalks and stems and, if they process these items further, ensure they are processing them into non-marijuana products.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., September 6, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.15.804 and 42.15.806 and the repeal of ARM 42.15.808 pertaining to Montana Education Savings Plans (529 plans)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 26, 2022, at 12:30 p.m. the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 12, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The 67th Montana Legislature enacted House Bill 129 (2021) (HB 129) which, among other things, links Montana Education Savings Plans (529 plans) to federal law enacted under the Tax Cuts and Jobs Act of 2017. HB 129 exempts income deposited into a qualified 529 plan from Montana income tax.

The department proposes to amend and repeal the above-stated rules, as applicable, which is necessary to implement HB 129. The amendment to ARM 42.15.804(3) reflects the HB 129 amendment to 15-62-208(5), MCA. The amendment to ARM 42.15.806 reflects the HB 129 expansion of qualified educational expenses to more than just higher education.

The department also proposes the repeal of ARM 42.15.808 as a part of the Governor's Red Tape Relief Initiative because the rule is unnecessarily redundant to 15-30-2110, MCA, which expressly provides for the treatment of income tax deductions for 529 plan contributions in other states.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) and (2) remain the same.

(3) A program manager shall report a withdrawal as an early withdrawal if the withdrawal is made within ~~three years~~ one year of the date that the account was

opened.

(4) through (7) remain the same.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: 15-30-2110, 15-62-201, 15-62-208, MCA

42.15.806 TAXATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT EARNINGS (1) Earnings on family education savings program accounts are not included in Montana adjusted gross income when earned. The earnings will be included in Montana adjusted gross income when distributed to the extent they are not used to pay for qualified ~~higher~~ education expenses.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: 15-30-2110, MCA

5. The department proposes to repeal the following rule:

42.15.808 DEDUCTIONS FOR CONTRIBUTIONS TO OTHER STATES' 529 PLANS

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-62-207, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., September 6, 2022.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of HB 129, Representative Bedey, was contacted by email on April 25, 2022 and July 21, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State July 26, 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 pertaining to the scheduled dates for the 2023 Montana Administrative Register	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 29, 2022, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., August 22, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2022 Register Publication Schedule~~

~~Issue~~	~~Filing (due by noon)~~	~~Publication~~
~~1~~	~~January 4~~	~~January 14~~
~~2~~	~~January 18~~	~~January 28~~
~~3~~	~~February 1~~	~~February 11~~
~~4~~	~~February 15~~	~~February 25~~
~~5~~	~~March 1~~	~~March 11~~
~~6~~	~~March 15~~	~~March 25~~
~~7~~	~~April 5~~	~~April 15~~
~~8~~	~~April 19~~	~~April 29~~
~~9~~	~~May 3~~	~~May 13~~
~~10~~	~~May 17~~	~~May 27~~
~~11~~	~~May 31~~	~~June 10~~
~~12~~	~~June 14~~	~~June 24~~
~~13~~	~~June 28~~	~~July 8~~

~~14~~	~~July 12~~	~~July 22~~
~~15~~	~~July 26~~	~~August 5~~
~~16~~	~~August 16~~	~~August 26~~
~~17~~	~~August 30~~	~~September 9~~
~~18~~	~~September 13~~	~~September 23~~
~~19~~	~~September 27~~	~~October 7~~
~~20~~	~~October 11~~	~~October 21~~
~~21~~	~~October 25~~	~~November 4~~
~~22~~	~~November 9~~	~~November 18~~
~~23~~	~~November 29~~	~~December 19~~
~~24~~	~~December 13~~	~~December 23~~

2023 Register Publication Schedule

Issue	Filing (due by noon)	Publication
1	January 3	January 13
2	January 17	January 27
3	January 31	February 10
4	February 14	February 24
5	February 28	March 10
6	March 14	March 24
7	April 4	April 14
8	April 18	April 28
9	May 2	May 12
10	May 16	May 26
11	May 30	June 9
12	June 13	June 23
13	June 27	July 7
14	July 11	July 21
15	July 25	August 4
16	August 15	August 25
17	August 29	September 8
18	September 12	September 22
19	September 26	October 6
20	October 10	October 20
21	October 24	November 3
22	November 7	November 17
23	November 28	December 8
24	December 12	December 22

(2) remains the same.

AUTH: 2-15-401, MCA
IMP: 2-4-312, MCA

REASONABLE NECESSITY: ARM 1.2.419 is proposed to be amended to set dates pertinent to the twice-monthly publication of the Montana Administrative Register during 2023. The schedule is being proposed at this time in order that it may be adopted in a timely manner to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 26th day of July, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.104 and 2.59.401 pertaining to semiannual assessments and supervisory fees for banks and credit unions	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 10, 2022, the Department of Administration published MAR Notice No. 2-59-627 pertaining to the proposed amendment of the above-stated rules at page 856 of the 2022 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rules as proposed.

3. The department received one comment in response to the proposal. A summary of the comment and the department's response are set forth below:

COMMENT #1: The department received a comment in support of the proposal.

RESPONSE #1: The department appreciates the comment.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.6.601 and 4.12.1031 and the repeal of 4.19.201 pertaining to hemp	)))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 24, 2022, the Department of Agriculture published MAR Notice No. 4-22-275 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 947 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has amended ARM 4.6.601 and 4.12.1031 as proposed.

3. The department has repealed ARM 4.19.201 as proposed.

4. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Agriculture

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Yellowstone River in Park County	)))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The Highway 89 bridge trestle, which crosses the Yellowstone River, is at risk of structural failure and collapse.

(b) Persons recreating on or near the Yellowstone River surrounding the trestle are at risk of injury or death due to possible collapse of the bridge.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 15 of the 2022 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 19, 2022, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The emergency rule is effective July 20, 2022, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I YELLOWSTONE RIVER EMERGENCY CLOSURE (1) A portion of the Yellowstone River is in Park County.

(2) The Yellowstone River is closed to all recreational use from the Mayor's Landing Fishing Access Site to the Sheep Mountain Fishing Access Site.

(3) This rule will remain in effect until the department determines that the affected area of the Yellowstone River is again safe for public occupancy and recreational use. Signs closing the river will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail jesssnyder@mt.gov. Any comments must be received no later than September 2, 2022.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on July 20, 2022.

/s/ Mike Volesky
Mike Volesky
Chief of Operations
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State July 20, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III and the repeal of ARM 24.28.101, 24.28.102, 24.28.103, 24.28.104, 24.28.105, 24.28.106, 24.28.107, 24.28.108, 24.28.110, 24.28.111, and 24.28.112 pertaining to workers' compensation mediation	)	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On June 24, 2022, the Department of Labor and Industry (department) published MAR Notice No. 24-28-396 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 957 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department held a public hearing in Helena on July 19, 2022, over the Zoom videoconference and telephonic platform at which no members of the public commented. Written comments were received during the public comment period.

3. The department has thoroughly considered the comments made. A summary of the comments and the department's responses are as follows:

COMMENT #1: A commenter suggested that New Rule I does not sufficiently require those requesting mediation to state the basis for their mediation request because it does not require the filling out of a department-generated form.

RESPONSE #1: The department acknowledges the comment. However, the concern is statutorily addressed and need not be reiterated in rule. Section 39-71-2401, MCA requires parties to make specific written demands, and respond to such demand, prior to a mediation request. Failure to comply with this process subjects the mediation to dismissal by motion of a party or on the mediator's motion. The department will continue to make its mediation request form available to parties, many of whom, it is expected, will continue to make use of it.

COMMENT #2: A commenter suggested that New Rule III which permits mediation via a "remote conferencing platform" contradicts 39-71-2411(4), MCA, which provides for mediation in person or "by telephone conference call." The commenter states she has had issues utilizing zoom conferencing for mediation. The commenter further argues that parties may not have the technological capabilities to join a Zoom meeting.

RESPONSE #2: The comment is noted. However, the commenter overly narrowly reads the statute. While true that 39-71-2411, MCA provides for mediation by

conference call, nothing requires the mediation not to use an electronic platform to host the call nor does it require the department to call out, rather than a party call in, to be effective.

To the extent the commenter is specifically concerned with utilization of the Zoom platform, the platform permits parties to call a specified phone number to participate in a conference call. This requires no technological access or capabilities by a party beyond the use of a telephone. To the extent the commenter is concerned that a video conference may be utilized for mediation, such would only be utilized by the request of and with the consent of all parties to the mediation.

4. The department has adopted New Rule I (24.28.121), New Rule II (24.28.125), and New Rule III (24.28.129) as proposed.

5. The department has repealed ARM 24.28.101, 24.28.102, 24.28.103, 24.28.104, 24.28.105, 24.28.106, 24.28.107, 24.28.108, 24.28.110, 24.28.111, and 24.28.112 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.138.402 and 24.138.504 pertaining to fee schedules and clinical exam criteria	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 29, 2022, the Board of Dentistry (board) published MAR Notice No. 24-138-82 regarding the public hearing on the proposed amendment of the above-stated rules, at page 565 of the 2022 Montana Administrative Register, Issue No. 8.

2. On May 20, 2022, a public hearing was held on the proposed amendment of the above-stated rules via the videoconference and telephonic platform. Comments were received by the May 27, 2022, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters thanked the board for offering alternatives to single encounter-based patient exams, believing they reduce restrictions on portability and licensure, reduce burdens on practitioners, and improve mobility.

RESPONSE 1: The board agrees and appreciates all comments received in the rulemaking process.

COMMENT 2: One commenter stated the manikin-based exam was just as good as the patient-based exam the commenter took when initially licensed in 2005. The commenter appreciated that the rule change will allow the commenter's licensure here.

RESPONSE 2: The board agrees and appreciates all comments received in the rulemaking process.

4. The board has amended ARM 24.138.402 and 24.138.504 exactly as proposed.

BOARD OF DENTISTRY
DIANNE KLEMANN, RDH, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.401, 24.156.409, 24.156.1306, 24.156.1403, and 24.156.2701, the adoption of NEW RULES I through V, and the repeal of ARM 24.156.501, 24.156.603, 24.156.619, 24.156.625, 24.156.629, 24.156.802, 24.156.1001, 24.156.1005, 24.156.1006, 24.156.1007, 24.156.1301, 24.156.1303, 24.156.1304, 24.156.1307, 24.156.1308, 24.156.1309, 24.156.1401, 24.156.1404, 24.156.1407, 24.156.1412, 24.156.1413, 24.156.1601, 24.156.1617, 24.156.1625, 24.156.1626, 24.156.2705, 24.156.2707, 24.156.2713, and 24.156.2775 pertaining to the board of medical examiners	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 10, 2022, the Board of Medical Examiners published MAR Notice No. 24-156-93 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 880 of the 2022 Montana Administrative Register, Issue No. 11.

2. On July 5, 2022, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules via the videoconference and telephonic platform. No comments were received by the July 8, 2022, deadline.

3. The board has amended ARM 24.156.401, 24.156.409, 24.156.1306, 24.156.1403, and 24.156.2701 exactly as proposed.

4. The board has adopted NEW RULE I (24.156.450), NEW RULE II (24.156.407), NEW RULE III (24.156.405), NEW RULE IV (24.156.403), and NEW RULE V (24.156.1416) exactly as proposed.

5. The board has repealed ARM 24.156.501, 24.156.603, 24.156.619, 24.156.625, 24.156.629, 24.156.802, 24.156.1001, 24.156.1005, 24.156.1006, 24.156.1007, 24.156.1301, 24.156.1303, 24.156.1304, 24.156.1307, 24.156.1308,

24.156.1309, 24.156.1401, 24.156.1404, 24.156.1407, 24.156.1412, 24.156.1413, 24.156.1601, 24.156.1617, 24.156.1625, 24.156.1626, 24.156.2705, 24.156.2707, 24.156.2713, and 24.156.2775 exactly as proposed.

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, NUTRITIONIST,
PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.159.910, 24.159.911, and 24.159.1412, the adoption of NEW RULES I and II, and the repeal of ARM 24.159.406, 24.159.410, 24.159.416, 24.159.903, 24.159.1003, 24.159.1022, 24.159.1024, 24.159.1028, 24.159.1029, 24.159.1037, 24.159.1041, 24.159.1052, 24.159.1053, 24.159.1203, 24.159.1222, 24.159.1224, 24.159.1228, 24.159.1229, 24.159.1237, 24.159.1241, 24.159.1252, 24.159.1253, 24.159.1403, 24.159.1427, 24.159.1431, 24.159.1443, and 24.159.1601, pertaining to the Board of Nursing	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 13, 2022, the Board of Nursing (board) published MAR Notice No. 24-159-92 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 658 of the 2022 Montana Administrative Register, Issue No. 9.

2. On June 3, 2022, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules via the videoconference and telephonic platform. No comments were received by the June 10, 2022, deadline.

3. The board has amended ARM 24.159.910, 24.159.911, and 24.159.1412 exactly as proposed.

4. The board has adopted NEW RULE I (24.159.420) and NEW RULE II (24.159.422) exactly as proposed.

5. The board has repealed ARM 24.159.406, 24.159.410, 24.159.416, 24.159.903, 24.159.1003, 24.159.1022, 24.159.1024, 24.159.1028, 24.159.1029, 24.159.1037, 24.159.1041, 24.159.1052, 24.159.1053, 24.159.1203, 24.159.1222, 24.159.1224, 24.159.1228, 24.159.1229, 24.159.1237, 24.159.1241, 24.159.1252, 24.159.1253, 24.159.1403, 24.159.1427, 24.159.1431, 24.159.1443, and 24.159.1601 exactly as proposed.

BOARD OF NURSING
SARAH SPANGLER, RN,
PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF PROFESSIONAL
ENGINEERS AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.183.404 pertaining to fee schedule	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 29, 2022, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR Notice No. 24-183-45 regarding the public hearing on the proposed amendment of the above-stated rule, at page 569 of the 2022 Montana Administrative Register, Issue No. 8.

2. On May 25, 2022, a public hearing was held on the proposed amendment of the above-stated rules via the videoconference and telephonic platform. No comments were received by the May 27, 2022, deadline.

3. The board has amended ARM 24.183.404 exactly as proposed.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
RONALD DRAKE, P.E., PRESIDING
OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.225 pertaining to importation of camelids	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 13, 2022, the Department of Livestock published MAR Notice No. 32-22-328 pertaining to the proposed amendment of the above-stated rule at page 667 of the 2022 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.403 pertaining to diagnostic laboratory fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 24, 2022, the Department of Livestock published MAR Notice No. 32-22-329 pertaining to the proposed amendment of the above-stated rule at page 961 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State July 26, 2022.

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.21.415 and 36.21.661 and the repeal of ARM 36.21.413 pertaining to water well licensing and construction standards	))))	NOTICE OF AMENDMENT AND REPEAL

To: All Concerned Persons

1. On April 15, 2022, the Board of Water Well Contractors and the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-213 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 490 of the 2022 Montana Administrative Register, Issue Number 7.

2. The department has amended ARM 36.21.415 and 36.21.661 as proposed.

3. The department has repealed ARM 36.21.413 as proposed.

4. The department has thoroughly considered the written and oral comments received. A summary of the comments received and the department's responses are as follows:

COMMENT NO. 1: The rules should be adopted as proposed.

RESPONSE: The department agrees.

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

/s/ Cameron Boster
Cameron Boster
Rule Reviewer

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 37.40.801, 37.40.805, 37.40.806, 37.40.808, 37.40.815, 37.40.816, 37.40.825, and 37.40.830, and the repeal of 37.40.807 pertaining to Medicaid hospice fee reimbursement and care program	)))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 24, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-988 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1007 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department has adopted New Rule I (37.40.802) as proposed.

3. The department has amended ARM 37.40.801, 37.40.805, 37.40.806, 37.40.808, 37.40.815, 37.40.816, 37.40.825, and 37.40.830 as proposed.

4. The department has repealed ARM 37.40.807 as proposed.

5. No comments or testimony were received.

6. The department intends to apply the rate increase under ARM 37.40.830 retroactively to October 1, 2021. Any decreases in hospice rates will not be applied retroactively and are effective upon the day after the date of publication of this adoption notice. All other rules changes are effective upon the day after the date of publication of the adoption notice.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 37.78.1001, 37.78.1002, 37.78.1005, 37.78.1006, 37.78.1010, 37.78.1011, 37.78.1012, 37.78.1013, and 37.78.1014 pertaining to the Families Achieving Independence in Montana (FAIM) rules	)	NOTICE OF REPEAL

TO: All Concerned Persons

1. On May 27, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-991 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 785 of the 2022 Montana Administrative Register, Issue Number 10.

2. The department has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

4. These rule repeals are effective August 6, 2022.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 26, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2022. This table includes notices in which those rules adopted during the period February 11, 2022, through July 22, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-2-624	Public Meetings, p. 640, 1312
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MONTANA ADMINISTRATIVE REGISTER

2022 ISSUE NO. 15
AUGUST 5, 2022
PAGES 1344-1685

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